

(22,987)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 911.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE
MERCANTILE TRUST COMPANY, HENRY YEACKEL
AND FLORA YEACKEL, HIS WIFE; WILBUR S. BAD-
LEY AND FLORENCE C. BADLEY, HIS WIFE; C. D.
WISE AND — WISE, HIS WIFE, AND R. D. McCULLY,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

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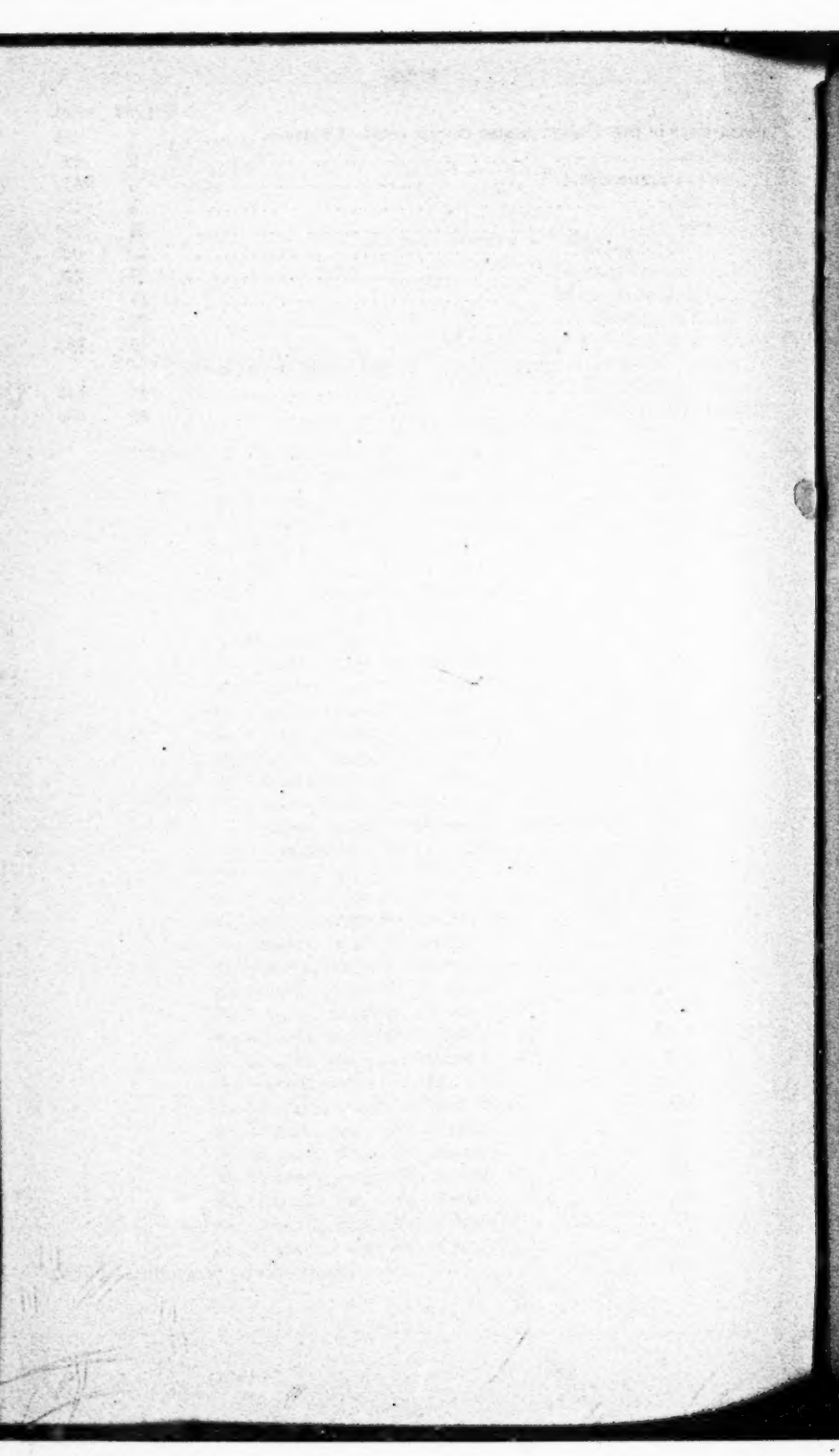
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*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YE-
ACKEL, His Wife, WILBUR S. BADLEY
and ——— BADLEY, His Wife, C. D.
WISE and ——— WISE, His Wife, R. D.
McCULLY, JOHN J. ZEHNER and ———
ZEHNER, His Wife,

Defendants.

Names and Addresses of Attorneys.

OSCAR CAIN, Federal Building, Spokane, Wash-
ington,

Solicitor for Complainant.

CHARLES P. DONNELLY, St. Paul, Minnesota,
and EDWARD J. CANNON, Spokane, Wash-
ington,

Solicitors for Defendants.

*In the Circuit Court of the United States for the
Eastern District of Washington.*

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YE-
ACKEL, His Wife, WILBUR S. BADLEY
and ——— BADLEY, His Wife, C. D.
WISE and ——— WISE, His Wife, R. D.
McCULLY, JOHN J. ZEHNER and ———
ZEHNER, His Wife,

Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of
the United States for the Eastern District of
Washington:

Comes now the United States of America, by
Charles J. Bonaparte, its Attorney General, A. G.
Avery, United States District Attorney, and J. B.
Lindsley, Assistant United States District Attor-
ney, and, acting for itself and on behalf of the
Indians hereinafter named, and as the trustee and
guardian therefor, for its amended bill of complaint,
complains and says:

FIRST.

That the Northern Pacific Railway Company, de-

fendant herein, now is and for eleven years last past has been a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen of said State; that the Mercantile Trust Company now is and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of New York, and is a citizen of said State; that the defendants Henry Yeackel and ——— Yeackel now are and at all times herein mentioned were husband and wife and residents and citizens of the State of Washington; that Wilbur S. Badley and ——— Badley now are and at all times herein mentioned were husband and wife and residents and citizens of the State of Washington; that C. D. Wise and ——— Wise now are and at all times herein mentioned were residents and citizens of the State of Washington; that R. D. McCully now is and at all times herein mentioned was a resident and citizen of the State of Washington; that John J. Zehner and ——— Zehner now are and at all times herein mentioned were husband and wife and residents and citizens of the State of Washington.

SECOND.

That said defendant, Northern Pacific Railway Company, did, on or about the 1st day of September, 1896 by transfer and conveyance, become the successor in interest in and to all of the property, rights and interests of the Northern Pacific Railroad Company, a corporation organized and existing under and by virtue of an Act of Congress passed July 2, 1864 (13 Stats. 365), and entitled,

"An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast by the Northern route." That the property rights and interests so transferred and conveyed by said last-named corporation to said defendant, Northern Pacific Railway Company, included all rights to the public lands granted, or to be granted, by the United States to said Northern Pacific Railroad Company under and by the terms of said Act of Congress, and, in terms, all lands for which patents had been theretofore issued to said corporation by the United States, said last mentioned lands being described in Exhibit "A," hereto annexed, as having been patented prior to September 1, 1896.

THIRD.

That on the 9th day of June, 1855 (12 Stats. 951), there was entered into and concluded by and between the United States and the Yakima Nation of Indians a treaty, thereafter duly ratified, by the terms of which there was ceded to the United States (subject to the reservation hereinafter mentioned) certain lands situate in the State of Washington and in the Eastern Judicial District thereof. That within the territorial limits of the lands so ceded as aforesaid there was, by Article 2 of said treaty, reserved for the exclusive use, benefit and occupancy of the Indians belonging to said Yakima Nation, a certain tract of land which, as surveyed, included the lands described in Exhibit "A" hereto annexed and hereby made a part of this amended bill of complaint; that the land so included in said

Indian reservation would, but for its being so reserved in said treaty and excepted from the grant contained in said Act of Congress, have been included in the primary or indemnity limits of said grant upon the filing of the plat of definite location of the road of said Northern Pacific Railroad Company opposite said lands as provided in said Act of Congress; that said plat was filed as aforesaid in the years 1883 and 1884.

FOURTH.

That thereafter the United States, acting in supposed compliance with the terms of said Act of Congress in respect to the said land grant therein, and acting upon the erroneous and mistaken belief that the lands described in said Exhibit "A" were without the territorial limits of the lands so reserved by the terms of said treaty as an Indian reservation, and being led to said erroneous and mistaken belief by reason of an erroneous and defective survey of said reservation, on the application of the defendant herein, Northern Pacific Railway Company, as the successor in interest of said Northern Pacific Railroad Company (as to patents issued subsequent to September 1, 1896), and on the application of said last named corporation, (as to patents issued prior to September 1, 1896), issued to said corporations, as indicated and shown by said Exhibit "A," patents to the parcels of land respectively described therein, said patents being issued as of the dates stated opposite the description of the respective parcels of land described in said exhibit. That the defective and erroneous survey above re-

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ferred to was made before the issuance of said patents as aforesaid, and which survey erroneously showed and represented the lands described in said Exhibit "A" as being without the limits of said Indian reservation, all of which this complainant believed and had reason to believe when said patents were issued.

FIFTH.

That at the time said patents were issued as aforesaid, and at all times theretofore and thereafter until the year 1904, the lands described in said Exhibit "A" were, by the said United States, thought to be within the lands granted to said Northern Pacific Railroad Company, and its successor in interest, by the terms of the Act of Congress last mentioned, though in fact said lands were not included in said grant but were excluded therefrom because of the exemptions therein and the fact that they had been theretofore by said treaty granted by the United States to said Indians as a reservation.

SIXTH.

That the defendant, The Mercantile Trust Company, as complainant is informed and believes, claims some right, title, interest or estate in and to said land, by reason of having a mortgage or lien thereon given by said Northern Pacific Railway Company to said defendant; that the precise nature or extent of said claim is to said complainant not known, but whatever said claim may be it is void and of no force, effect or merit.

SEVENTH.

That the defendants Henry Yeackel, ———

Yeackel, Wilbur S. Badley, ——— Badley, C. D. Wise, ——— Wise, R. D. McCully, John J. Zehner and ——— Zehner, as complainant is informed and believes, each claim some right, title, interest, or estate in and to said land, or a portion thereof, by reason of having entered into a contract with the said Northern Pacific Railway Company, or its predecessor in interest, for the purchase of said land, or some portion thereof, or said defendants last named have actually received alleged conveyances of said lands, or some portion thereof, from said Northern Pacific Railway Company, or its predecessor in interest; that the precise nature or extent of the respective claims of said last named defendants is to the complainant not known, but whatever the same may be, it is void and of no force, effect or merit.

EIGHTH.

That neither the said Yakima Nation, nor any of the Indians thereof, have at any time, or at all, consented to, or acquiesced in, the claim to, or occupation of, said lands by the defendant railway company, or any one other than themselves, nor to the issuing to said defendant railway company by the United States of patents therefor, but said Indians now do, and at all times herein mentioned have, claimed the said lands as a part of their said reservation, and that they had the sole right to use and occupy the same free and clear of any and all claims, liens, or incumbrances of the defendants, or others.

NINTH.

That the complainant is still the owner of said

lands and entitled to the record title thereof by reason of the premises aforesaid, and the Secretary of the Interior did, more than one year prior hereto, duly request and demand of the defendant, Northern Pacific Railway Company, that it relinquish or reconvey, to said complainant the lands and premises so erroneously patented as aforesaid, and cancel and set aside the patents therefor, to the end that said lands might be of the same status and in the same condition and position as before the selection thereof by, and patenting thereof to, said Northern Pacific Railroad Company and Northern Pacific Railway Company, respectively, but that said defendant has at all times refused, and now refuses, to make such relinquishment or reconveyance or set aside said patents, and asserts and claims that to said lands it has the full, legal and equitable title and right to the possession thereof, and refuses to recognize any right, title, interest, or estate therein in said Indians or in complainant as their trustee and guardian, or otherwise.

Forasmuch, therefore, as the complainant and said Indians hereinbefore described have been, by mistake, deprived of the record title to their valuable lands, and their title thereto has become clouded and denied, and as said defendants are about to, and will, transfer and convey said lands to others in disregard of the rights of complainant and said Indians, and will go upon and occupy said lands and assert title thereto, and further cloud said Indians' title and compel a multiplicity of actions of like character, unless prevented by the intervention of

this Court, and as said Indians and complainant are remediless at and by the strict rules of the common law and are only relievable in a court of equity wherein such matters are fully cognizable and relievable, and to the end that said defendants, and each of them, may full, true, direct and certain answer make according to their best knowledge, information and belief to all and singular the matters and charges aforesaid, but not under oath (their answer under oath being hereby expressly waived), complainant prays as follows:

That the said Northern Pacific Railway Company may be held, adjudged and decreed to have secured the record title and patents to the lands hereinbefore described, by mistake, and without the fault, concurrence, or acquiescence of said Indians or of complainant herein, and that the other defendants had due notice of said mistake at the time thereof, and that said patents are a cloud on the title to said lands, and that, by reason of such mistake, and the premises, the said patents issued to said defendant, Northern Pacific Railway Company, and the mortgage or lien of said defendant, The Mercantile Trust Company, as well as any claim or apparent right, title, or interest of said other defendants, be declared void, and, as such, to be held for naught and set aside and the said land restored to the complainant and the said Indians as a reservation; that the defendants and each of them, and every one holding through or under them, be forever enjoined from interfering with said lands, or the possession or occupancy of said Indians thereof, or claiming or assert-

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ing title to the same or any part thereof; and that the defendants be held to pay into the treasury of the complainant all such reasonable sums of money as it may have found necessary to lay out and expend as costs herein, and that the complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as may seem proper to this Honorable Court.

May it please your Honors to grant unto complainant the writ of subpoena issued out of and under the seal of this Honorable Court, to be directed to the said Northern Pacific Railway Company, The Mercantile Trust Company, Henry Yeackel, ——— Yeackel, Wilbur S. Badley, ——— Badley, C. D. Wise, ——— Wise, R. D. McCully, John J. Zehner and ——— Zehner, commanding them by a day certain and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And complainant will ever pray.

(Signed) CHARLES J. BONAPARTE,
Attorney General.

(Signed) A. G. AVERY,
United States Attorney.

(Signed) J. B. LINDSLEY,
Asst. United States Attorney.

Exhibit "A" [to Amended Bill of Complaint].

List of lands for which patents have been issued to the Northern Pacific Railroad Company and the Northern Pacific Railway Company. The lands appearing herein as having had patents issued therefor prior to September 1, 1896, are those for which patents were received by the Northern Pacific Railroad Company. The patents issued after said last-named date were issued to the Northern Pacific Railway Company.

Description.	Sec.	Tp.	Range.	Patented.
	N.	E.		
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ and S. $\frac{1}{2}$ SE. $\frac{1}{4}$	11	7	12	Jan. 4, 1904
Lots 1 and 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$. 1—6—13) ^z	11	6	13	Selected only
NW. $\frac{1}{4}$	11	6	13	
SW. $\frac{1}{4}$ NE. $\frac{1}{4}$	1	7	13	Jan. 4, 1904
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ and Lots 1, 2, 3 and 4.....	19	7	13	Jan. 4, 1904
All.....	1	8	13	May 10, 1895
Lots 1, 2, 3 and 4 W. $\frac{1}{2}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ SE. $\frac{1}{4}$	5	8	13	Jan. 4, 1904
All.....	13	8	13	Mar. 5, 1901
All.....	15	8	13	Jan. 4, 1904
Lots 3, 4, 9 and 10.....	19	8	13	Jan. 4, 1904
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SE. $\frac{1}{4}$	25	8	13	May 10, 1895
Lots 3, 4, 9 and 10.....	31	8	13	Jan. 4, 1904

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Description.	Sec.	Tp.	Range.	Patented.
	N.	E.		
W. $\frac{1}{2}$ NW. $\frac{1}{4}$ and W. $\frac{1}{2}$				
SW. $\frac{1}{4}$	33	8	13	Jan. 4, 1904
Lots 1 and 2 and S. $\frac{1}{2}$ NE.				
$\frac{1}{4}$	1	9	13	Jan. 6, 1896
Lots 3 and 4 and S. $\frac{1}{2}$ NW.				
$\frac{1}{4}$	1	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	1	9	13	Jan. 6, 1896
SW. $\frac{1}{4}$	1	9	13	Jan. 6, 1896
Lots 1 and 2 and S. $\frac{1}{2}$ NE.				
$\frac{1}{4}$	3	9	13	Jan. 6, 1896
Lots 3 and 4 and S. $\frac{1}{2}$ NW.				
$\frac{1}{4}$	3	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	3	9	13	Jan. 6, 1896
SW. $\frac{1}{4}$	3	9	13	Jan. 6, 1896
Lots 1 and 2 and S. $\frac{1}{2}$ NE.				
$\frac{1}{4}$	5	9	13	Jan. 6, 1896
Lots 3 and 4 and S. $\frac{1}{2}$ NW.				
$\frac{1}{4}$	5	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	5	9	13	Jan. 6, 1896
SW. $\frac{1}{4}$	5	9	13	Jan. 6, 1896
NE. $\frac{1}{4}$	7	9	13	Selected only
Lot 2 and SE. $\frac{1}{4}$ NW. $\frac{1}{4}$..	7	9	13	Jan. 4, 1904
Lot 1 and NE. $\frac{1}{4}$ NW. $\frac{1}{4}$..	7	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	7	9	13	Selected only
All	9	9	13	Jan. 6, 1896
All	11	9	13	Jan. 6, 1896
All	13	9	13	Jan. 6, 1896
All	15	9	13	Jan. 6, 1896
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$				
SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$	17	9	13	Jan. 6, 1896

Description.	Sec.	Tp.	Range.	Patented.
	N.	N.	N.	
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE.				
$\frac{1}{4}$, NE. $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$				
SE. $\frac{1}{4}$ and SE. $\frac{1}{4}$ NE. $\frac{1}{4}$	19	9	13	Jan. 4, 1904
All	21	9	13	Jan. 6, 1896
All	23	9	13	Jan. 6, 1896
All	25	9	13	Jan. 6, 1896
All	27	9	13	Jan. 6, 1896
N. $\frac{1}{2}$ NE. $\frac{1}{4}$	29	9	13	Jan. 6, 1896
NW. $\frac{1}{4}$ NW. $\frac{1}{4}$	29	9	13	Jan. 4, 1904
Lots 3 and 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$				
and N. $\frac{1}{2}$ SE. $\frac{1}{4}$	31	9	13	Jan. 4, 1904
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ and				
SE. $\frac{1}{4}$	33	9	13	Jan. 6, 1896
S. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$	33	9	13	Jan. 4, 1904
All	35	9	13	Jan. 6, 1896
NE. $\frac{1}{4}$ NE. $\frac{1}{2}$ Lot 1 and				
SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	1	6	14	Selected only
Fr. NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ Fr.				
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ and Lot 2	7	6	14	
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ and SE. $\frac{1}{4}$				
NW. $\frac{1}{4}$	11	6	14	
E. $\frac{1}{2}$ NW. $\frac{1}{4}$	13	6	14	
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE.				
$\frac{1}{4}$ and S. $\frac{1}{2}$ SE. $\frac{1}{4}$	15	6	14	
All	1	7	14	May 10, 1895
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$				
N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 1, 2, 3,				
4, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SE.				
$\frac{1}{4}$	5	7	14	May 10, 1895
All	9	7	14	May 10, 1895

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Description.	Sec.	Tp., N.	Range, E.	Patented.
All	13	7	14	May 10, 1895
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$	21	7	14	May 10, 1895
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$	21	7	14	Jan. 4, 1904
All	25	7	14	May 10, 1895
W. $\frac{1}{2}$ NE. $\frac{1}{4}$	27	7	14	Selected only
N. $\frac{1}{2}$ SW. $\frac{1}{4}$	29	7	14	Jan. 4, 1904
SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	31	7	14	Jan. 4, 1904
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	35	7	14	Jan. 4, 1904
All	1	6	15	Jan. 6, 1896
All	5	6	15	Jan. 6, 1896
Lot 4 and SE. $\frac{1}{4}$ SW. $\frac{1}{4}$...	7	6	15	Selected only
All	9	6	15	Jan. 6, 1896
All	13	6	15	Jan. 6, 1896

[Endorsements]: Service of the within amended Bill of Complaint upon me, this 5th day of March, 1907, by a true copy thereof, is hereby admitted.

(Signed) EDWARD J. CANNON,
Solicitor for Northern Pacific Railway Company.

Amended Bill of Complaint. Filed in the U. S. Circuit Court for the Eastern District of Washington, March 5th, 1907. Frank C. Nash, Clerk.

[Answer of N. P. Ry. Co. to Complaint.]

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

**NORTHERN PACIFIC RAILWAY COMPANY (a
Corporation), and THE MERCANTILE
TRUST COMPANY (a Corporation),
Defendants.**

The answer of the Northern Pacific Railway Company to the Bill of Complaint of the United States of America:

This defendant admits that it is and has been, as alleged, a corporation under the laws of the State of Wisconsin, and it is advised that the Mercantile Trust Company is and has been, as alleged, a corporation under the laws of the State of New York; admits that it became, on or about the first day of September, 1896, as alleged, the successor in interest to all the property, rights and interest of the Northern Pacific Railroad Company, a corporation under the Act of Congress of July 2, 1864; and that among said property and rights were the public lands granted and to be granted by the United States under the said Act of Congress and amendments thereto.

Further answering, this defendant says it is true, as alleged, that on the 9th day of June, 1855, there

was entered between the United States and the Yakima Nation of Indians a treaty, and the defendant begs leave to refer to the treaty itself for the terms thereof. The defendant denies that within the territorial limits of the lands ceded to the Indians by the said treaty or reserved for their exclusive use, benefit or occupancy, there was included any of the lands described in the bill of complaint or the exhibit thereto annexed; and admits that all of the lands therein referred to were included either within the primary or indemnity limits of the said grant made to this defendant's predecessor, and admits that the map of definite location opposite the lands in suit was filed by the Northern Pacific Railroad Company, as alleged in the bill.

Further answering, the defendant says that from the date of the said treaty in 1855 down to the year 1890, it was settled by continuous and uniform practice and adjudication in all departments of the United States Government that the boundaries of the Yakima Indian Reservation as described in the treaty did not include the lands referred to in the bill of complaint. In conformity with such uniform practice and adjudication the land department of the United States, well knowing all the facts, executed and delivered to this defendant the patents referred to in the bill. The United States in this manner patented to this defendant and its said predecessor 19,155.62 acres as follows: Upon May 10, 1895, 4,125.72 acres; January 6, 1896, 11,282.80 acres; March 5, 1901, 640 acres; all the foregoing being within the place limits of the Northern Pacific grant;

January 4, 1904, 3,107.10 acres within the indemnity limits of the grant. Of the said 4,125.72 acres patented in 1895 this defendant is a *bona fide* purchaser for value, having bought and paid for the same at full value at foreclosure sale in August, 1896, under the mortgages executed by the Northern Pacific Railroad Company. Of the lands so patented the defendant sold, before the filing of the bill herein, the following: Upon February 9, 1903, all of section 1, town 6 north, range 15 east, to Henry Yeackel, March 13, 1902, all of section 5, town 6 north, range 15 east, to Wilbur S. Badley; February 8, 1902, all of section 9, town 6 north, range 15 east, to C. D. Wise and R. D. McCully; June 16, 1902, all of section 13, town 6 north, range 15 east, to John J. Zehner. The persons named are, by virtue of their said purchases, *bona fide* purchasers in good faith for value.

Defendant further says that as to all the lands patented, as before stated, more than six years before the filing of the bill of complaint, the right to maintain this suit is barred by limitation.

Defendant denies that the lands were patented upon any erroneous or mistaken belief, and denies that the belief that the lands referred to in the bill were without the territorial limits of the lands reserved to the Indians by the said treaty was induced by any defective survey. On the contrary, defendant says that the survey, established and recognized from the time of the treaty down to the year 1890, and by which survey the lands in question fell without the limits of the reservation, was a correct survey and conformed to the calls of the treaty; and that

the resurvey made in 1890, relied upon in the bill of complaint, is incorrect and does not follow the calls of the treaty. Not only were the early surveys of the limits of the reservation (which surveys showed all the lands in suit as outside those limits) correct, but they were, as before stated, adjudicated and established to be correct by many years of continuous practice and decision of the United States.

Defendant further says that it is true the Mercantile Trust Company, as alleged, claims, and has, some right, title or interest in the lands in suit, which right, title, or interest is as follows: that on or about the 10th day of November, 1896, this defendant executed and delivered to the Mercantile Trust Company a mortgage under which bonds are issued and secured, amounting to \$108,650,000.00; said bonds have been purchased in good faith for value in reliance upon, among other things, the lands patented by the United States to this defendant and its predecessors and upon their rights to lands as recognized by the United States.

This defendant has no knowledge or information as to whether, as alleged, the Yakima Indians have at no time consented to or acquiesced in the claim of this defendant or the issuing of the said patents to it, or as to whether at all times or at what times they have claimed the boundaries of the reservation to be as alleged in the bill, and therefore this defendant denies the allegations of the bill in that particular.

The defendant admits that the Secretary of the Interior has requested it to reconvey to the United States the lands referred to in the bill, and that it

has declined and does decline to make such reconveyance, asserting that it has full legal and equitable title thereto and the right to the possession thereof.

Further answering the defendant says that only a portion of the lands described in the bill of complaint have been patented to it or to its predecessor. Of the lands described in the complaint the following have never been patented:

	Section.	Town N.	Range E.
Lots 1 & 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW.			
$\frac{1}{4}$ N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$	1	6	13
NW. $\frac{1}{4}$	11	6	13
NE. $\frac{1}{4}$	7	9	13
SE. $\frac{1}{4}$	7	9	13
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ or (and) Lot 1, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	1	6	14
NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ (NE. $\frac{1}{4}$); fractional, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ or (and) Lot 2..	7	6	14
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$; SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	11	6	14
E. $\frac{1}{2}$ NW. $\frac{1}{4}$	13	6	14
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$; NW. $\frac{1}{4}$ SE. $\frac{1}{4}$; S. $\frac{1}{2}$ SE. $\frac{1}{4}$	15	6	14
W. $\frac{1}{2}$ NE. $\frac{1}{4}$	27	7	14
Lot 4, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	7	6	15

Wherefore, the defendant prays to be hence dismissed with its costs.

(Signed) NORTHERN PACIFIC RAILWAY
COMPANY.

By HOWARD ELLIOTT,
President.

Attest: R. M. RELF,
Assistant Secretary.

[Seal Northern Pacific Railway Company.]

(Signed) EDWARD J. CANNON,
Defendant's Solicitor.

20 *The Northern Pacific Railway Co. et al.*

[Endorsements]: Service of within Answer hereby admitted this 4th day of February, 1907.

(Signed) A. G. AVERY,
 U. S. Attorney.

Answer of Defendant Northern Pacific Railway Company. Filed in the U. S. Circuit Court for the Eastern District of Washington, May 11th, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), et al.,
Defendants.

**Stipulation [That Answer of N. P. Ry. Co. to
Original Bill be Considered Answer to Amended
Bill].**

It is hereby stipulated and agreed between complainant and the defendant, Northern Pacific Railway Company, that the answer to the original bill herein filed by said defendant may be considered as its answer to the amended bill of complaint herein.

(Signed) A. G. AVERY,
 Solicitor for Complainant.

(Signed) EDWARD J. CANNON,
Solicitor for Defendant Northern Pacific Railway
Company.

[Endorsements]: Stipulation. Filed in the U. S. Circuit Court for the Eastern District of Washington, Mar. 26, 1907. (Signed) Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

VS.

NORTHERN PACIFIC RAILWAY COMPANY

(a Corporation), et al.,

Defendants.

Stipulation [That Amended Complaint may be Filed].

It is hereby stipulated by and between the parties to the above-entitled action that the complainant may file herein an amended bill of complaint for the purpose of adding certain parties defendant thereto.

Dated this 1st day of March, 1907.

(Signed) A. G. AVERY,

Solicitor for Complainant.

(Signed) E. J. CANNON,

Solicitor for Defendant.

[Endorsements]: Stipulation. Filed in the U. S. Circuit Court for the Eastern District of Washington, March 1st, 1907. Frank C. Nash, Clerk.

[Answer of N. P. R. R. Co. to Amended Bill.]

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY

(a Corporation), et al.,

Defendants.

**ANSWER OF NORTHERN PACIFIC RAIL-
ROAD COMPANY TO THE AMENDED
BILL OF COMPLAINT OF THE UNITED
STATES OF AMERICA.**

This defendant admits that it is a corporation organized and existing under and by virtue of an Act of Congress passed July 2, 1864, and entitled as set forth in the Bill of Complaint, and it is advised that the Northern Pacific Railway Company is and has been a corporation under the laws of the State of Wisconsin and that the Mercantile Trust Company is and has been, as alleged, a corporation under the laws of the State of New York. Admits that said Northern Pacific Railway Company became on or about the first day of September, 1896, as alleged, successor in interest to all the property, rights and interest of this defendant, and that among said property and rights were the public lands granted and to be granted by the United States under the said Act

of Congress and amendments thereto.

Further answering, this defendant says it is true, as alleged, that on the 9th day of June, 1855, there was entered into between the United States and the Yakima Nation of Indians a treaty and the defendant begs leave to refer to the treaty itself for the terms thereof. This defendant denies that within the territorial limits of the lands ceded to the Indians by the said treaty or reserved for their exclusive use, benefit or occupancy, there was included any of the lands described in the Bill of Complaint or the exhibit thereto annexed; and admits that all of the lands therein referred to were included either within the primary or indemnity limits of the said grant made to this defendant, and admits that the map of definite location opposite the lands in suit was filed by this defendant as alleged in the bill.

Further answering, this defendant says that from the date of said treaty in 1855 down to the year 1904 it was settled by continuous and uniform practice and adjudication in all the departments of the United States Government that the boundaries of the Yakima Indian Reservation, as described in the treaty, did not include the lands referred to in the bill of complaint. In conformity with such uniform practice and adjudication, the land department of the United States, well knowing all the facts, executed and delivered to defendant Northern Pacific Railway Company the patents referred to in the bill. Of the lands patented, 4125.74 acres were patented in 1895, and thereafter said defendant Northern Pacific Railway Company purchased the same for

full value *bona fide* at foreclosure sale in August, 1896, under mortgages executed by this defendant, and this defendant is advised that defendant Northern Pacific Railway Company has sold to *bona fide* purchasers in good faith for value a large part of said patented lands.

This defendant further says that as to all the lands patented, as before stated, more than six years before the filing of the bill of complaint, the right to maintain this suit is barred by limitation.

This defendant denies that the lands were patented upon any erroneous or mistaken belief, and denies that the belief that the lands referred to in the bill were without the territorial limits of the lands reserved to the Indians by the said treaty, was induced by any defective survey. On the contrary, defendant says that the survey, established and recognized from the time of the treaty down to the year 1890, and by which survey the lands in question fell without the limits of the reservation, was a correct survey and conformed to the calls of the treaty; and that the resurvey made in 1890, relied upon in the bill of complaint, is incorrect and does not follow the calls of the treaty. Not only were the early surveys of the limits of the reservation (which surveys showed all the lands in suit as outside those limits) correct, but they were, as before stated, adjudicated and established to be correct by many years of continuous practice and decision of the United States.

This defendant further says that it is advised that it is true that the Mercantile Trust Company, as alleged, claims and has some right, title, or interest

in the lands in suit, which right, title or interest is as follows: That on or about the 10th day of November, 1896, the defendant Northern Pacific Railway Company executed and delivered to the Mercantile Trust Company a mortgage under which bonds are issued and secured, amounting to \$108,650,000.00; said bonds have been purchased in good faith for value in reliance upon, among other things, the lands patented by the United States to this defendant, and its successor and upon their rights to lands as recognized by the United States.

This defendant has no knowledge or information as to whether, as alleged, the Yakima Indians have at no time consented to or acquiesced to the claim of this defendant or the issuing of the said patents to it or as to whether at all times or at what times they have claimed the boundaries of the reservation to be as alleged in the bill, and therefore this defendant denies the allegations of the bill in that particular.

This defendant admits that it is advised that the Secretary of the Interior has requested said defendant Northern Pacific Railway Company to reconvey to the United States the lands referred to in the bill and that said Northern Pacific Railway Company has declined and does decline to make such reconveyance, asserting that it has full legal and equitable title thereto and the right to the possession thereof.

Further answering, this defendant says that only a portion of the lands described in the bill of complaint have been patented to it or to its successor. Of the lands described in the complaint the following have never been patented:

	Section.	Town N.	Range E.
Lots 172, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW.			
$\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$	1	6	13
NW. $\frac{1}{4}$	11	6	13
NE. $\frac{1}{4}$	7	9	13
SE. $\frac{1}{4}$	7	9	13
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ or (and) Lot 1, SE.			
$\frac{1}{4}$ NW. $\frac{1}{4}$	1	6	14
NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ (NE. $\frac{1}{4}$); Frac-			
tional SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ or (and)			
Lot 2,.....	7	6	14
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$; SE. $\frac{1}{4}$ NW. $\frac{1}{4}$,...	11	6	14
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$; NW. $\frac{1}{4}$ SE. $\frac{1}{4}$;			
S. $\frac{1}{2}$ SE. $\frac{1}{4}$	15	6	14
W. $\frac{1}{2}$ NE. $\frac{1}{4}$	27	7	14
Lot 4, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	7	6	15
E. $\frac{1}{2}$ NW. $\frac{1}{4}$	13	6	14

Wherefore this defendant prays to be hence dismissed with its costs.

(Signed) NORTHERN PACIFIC RAILROAD
COMPANY.

By EDWARD J. CANNON,

ARTHUR B. LEE,

Defendant's Solicitors.

[Endorsements]: Due service of within answer by receipt of a true copy thereof admitted this 25th day of March, 1907.

(Signed) A. G. AVERY,

Attorney for Complainant.

Answer of Northern Pacific Railroad Company.
Filed in the U. S. Circuit Court for the Eastern Dis-

trict of Washington, July 6th, 1909. Frank C. Nash,
Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA.

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YEACKEL,
His Wife, WILBUR S. BADLEY and ———
BADLEY, His Wife, C. D. WISE and ———
WISE, His Wife, R. D. McCULLY, JOHN
H. ZEHNER and ——— ZEHNER, His
Wife,

Defendants.

Answer of Mercantile Trust Co. [to Amended Bill].

The answer of the Mercantile Trust Company to
the Amended Bill of Complaint of the United States
of America:

This defendant admits that it has been, and is, a
corporation under the laws of the State of New
York, and it is advised that the Northern Pacific
Railway Company is and has been, a corporation as
alleged under the laws of the State of Wisconsin.
Admits that on or about the first day of September,
1896, as alleged, said Railway Company became the

successor in interest to all the property, rights and interest of the Northern Pacific Railroad Company, a corporation under the Act of Congress of July 2, 1864, and that among said property and rights were the public lands granted and to be granted by the United States under said Act of Congress and amendments thereto.

Further answering, this defendant says it is true, as alleged, that on the 9th day of June, 1855, there was entered into between the United States and the Yakima Nation of Indians, a treaty, and the defendant begs leave to refer to the treaty itself for the terms thereof. The defendant denies that within the territorial limits of the lands ceded to the Indians by the said treaty or reserved for their exclusive use, benefit or occupancy, there was included any of the lands described in the Amended Bill of Complaint, or the exhibit thereto annexed, and admits that all of the lands therein referred to were included either within the primary or indemnity limits of the said land grant made to the predecessor of said defendant Railway Company, and admits that the map of definite location opposite the lands in suit was filed by the Northern Pacific Railroad Company as alleged in the bill.

Further answering, the defendant says that from the date of the said treaty on 1855 down to the year 1890, it was settled by continuous and uniform practice and adjudication in all departments of the United States Government that the boundaries of the Yakima Indian Reservation, as described in the treaty, did not include the lands referred to in the

Amended Bill of Complaint.

In conformity with such uniform practice and adjudication, the land department of the United States, well knowing all the facts, executed and delivered to defendant Railway Company the patents referred to in the bill. The United States in this manner patented to said defendant Railway Company and to its predecessor, 19,155.62 acres as follows: Upon May 10, 1895, 4,125.72. On January 6, 1896, 11,282.80 acres. On March 5, 1901, 640 acres, all the foregoing being within the place limits of the Northern Pacific grant; January 4, 1904, 3,107.10 acres within the indemnity limits of the grant. Of the said 4,125.72 acres patented in 1895, said defendant Railway Company is a *bona fide* purchaser for value, having bought and paid for the same at full value at foreclosure sale in August, 1896, under mortgages executed by the Northern Pacific Railroad Company. Of this land so patented, the defendant Railway Company sold before the filing of the bill herein, the following: Upon February 9, 1903, all of Section 1, Township 5 North of Range Fifteen East, to defendant Henry Yeackel; March 13, 1902, all of Section 5, Township 6 North of Range 15 East, to Wilbur S. Badley; February 8, 1902, all of Section 9, Township 6 North of Range 15 East, to C. D. Wise and R. D. McCully; June 16, 1902, all of Section 13, Township 6 North of Range 15 East, to John J. Zehner. The persons named are, by virtue of their said purchases, *bona fide* purchasers in good faith for value.

Defendant further says that as to all the lands patented, as before stated, more than six years before

the filing of the bill of complaint, the right to maintain this suit is barred by limitation.

Defendant denies that the lands were patented upon any erroneous or mistaken belief, and denies that the belief that the lands referred to in the bill were without the territorial limits of the lands reserved to the Indians by said treaty was induced by any defective survey. On the contrary, defendant says that the survey established and recognized from the time of the treaty down to the year 1890, and by which survey the lands in question fell without the limits of the reservation, was a correct survey and conformed to the calls of the treaty and that the re-survey made in 1890 relied upon in the Amended Bill of Complaint, is incorrect and does not follow the calls of the treaty. Not only were the early surveys of the limits of the reservation (which surveys showed all the lands in suit as outside those limits) correct, but they were, as before stated, adjudicated and established to be correct by many years of continuous practice and decision of the United States.

That on or about the 10th day of November, 1896, Defendant Railway Company executed and delivered to this defendant, a mortgage under which bonds are issued and secured, amounting to \$105,979,500. Said bonds have been purchased in good faith for value in reliance upon, among other things, the lands patented by the United States to defendant Railway Company and its predecessor, and upon their rights to lands as recognized by the United States.

This defendant has no knowledge or information as to whether, as alleged, the Yakima Indians have

at no time consented to or acquiesced in the claims of this defendant, or of the other defendants herein, or the issuing of the said patents to said Railway Company, or as to whether at all times or at what times they have claimed the boundaries of the reservation to be as alleged in the bill, and therefore, this defendant denies the allegations of the bill in that particular. This defendant is advised that it is true that the Secretary of the Interior has requested said Railway Company to reconvey to the United States, the lands referred to in the bill, and that said Railway Company has declined, and does decline, to make such reconveyance, asserting that it has full legal and equitable title thereto, and the right to the possession thereof.

Further answering, the defendant says that only a portion of the lands described in the bill of complaint have been patented to said Railway Company or its predecessor. Of the lands described in the complaint, the following have not been patented:

	N.	E.
Section.	Town	Range
Lots 1 and 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$,		
N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$	1	6 13
NW. $\frac{1}{4}$	11	6 13
NE. $\frac{1}{4}$	7	9 13
SE. $\frac{1}{4}$	7	9 13
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ or (and) Lot 1, SE. $\frac{1}{4}$		
NW. $\frac{1}{4}$	1	6 14
NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ (NE. $\frac{1}{4}$); fractional,		
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ or (and) Lot 2.....	7	6 14
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$; SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	11	6 14

	N.	E.
Section.	Town	Range
E. $\frac{1}{2}$ NW. $\frac{1}{4}$	13	6 14
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$; NW. $\frac{1}{4}$ SE. $\frac{1}{4}$; S. $\frac{1}{2}$		
SE. $\frac{1}{4}$	15	6 14
W. $\frac{1}{2}$ NE. $\frac{1}{4}$	27	7 14
Lot 4, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	7	6 15

Wherefore, the defendant prays to be hence dismissed with its costs.

(Signed) THE MERCANTILE TRUST COMPANY.

By W. C. VOILLON,
Vice-president.

Attest: _____,

Secretary.

(Signed) EDWARD J. CANNON,
Defendant's Solicitor.

[Endorsements]: Answer of Deft. Mercantile Trust Company.

Due service of within answer by receipt of a true copy thereof admitted this 19th day of August, —.

(Signed) A. G. AVERY,
Solicitor for Complainant.

Filed in the U. S. Circuit Court for the Eastern District of Washington, Aug. 20th, 1907. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MEROANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YEACKEL,
His Wife, WILBUR S. BADLEY and ———
BADLEY, His Wife, C. D. WISE and ———
WISE, His Wife, R. D. McCULLY, JOHN J.
ZEHNER, and ——— ZEHNER, His Wife,
Defendants.

Stipulation [for Substitution of Parties Defendant].

It is stipulated and agreed by and between the complainant and defendants John J. Zehner and ——— Zehner, his wife, that Henry Garner and ——— Garner, his wife, shall be substituted for and in place of said defendants, and that said defendants Henry Garner and ——— Garner, his wife, may file their answer to the Amended Bill of Complaint herein for and in place of said defendants Zehner, the same as if they had been originally impleaded as defendants in said action, and that said action shall proceed to final determination for and against said Henry Garner and ——— Garner, his wife, and that

34 *The Northern Pacific Railway Co. et al.*

they shall abide by the final decree that may be entered herein, the same as *they* had originally pleaded as defendants and subpoenas had been issued and served on them, and that no further proceedings herein shall be taken as against John Zehner and ——— Zehner, his wife, defendants above named.

Dated this 11th day of May, 1907.

(Signed) A. G. AVERY,

Solicitor for Complainant.

(Signed) EDWARD J. CANNON,

Solicitor for Defendants John J. Zehner and ———
Zehner, His Wife.

(Signed) EDWARD J. CANNON,

Solicitor for Henry Garner and ——— Garner, His
Wife.

[Endorsed]: Stipulation. Filed in the U. S. Circuit Court for the Eastern District of Washington. May 11th, 1907. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YEACKEL,
His Wife, WILBUR S. BADLEY and
——— BADLEY, His Wife, C. D. WISE and
———, His Wife, R. D. McCULLY, JOHN
J. ZEHNER, and ———, His Wife,

Defendants.

Separate Answer [of Henry Yeackel et ux. to
Amended Bill].

The Joint Answer of Henry Yeackel and ———
Yeackel, his wife, to the Amended Bill of Complaint
of the United States of America:

These defendants admit that they are and have
been, as alleged, husband and wife, and citizens and
residents of the State of Washington, and are ad-
vised that the Northern Pacific Railway Company is
and has been, as alleged, a corporation under the
laws of the State of Wisconsin, and that the Mercan-
tile Trust Company is and has been, as alleged, a
corporation under the laws of the State of New

York, and that said Northern Pacific Railway Company, on or about the first of September, 1896, as alleged, became the successor in interest to all the property, rights and interest of the Northern Pacific Railroad Company, a corporation under the Act of Congress of July 2d, 1864, and that among said property and rights were the public lands granted and to be granted by the United States under the said Act of Congress, and amendments thereto.

Further answering, these defendants say it is true, as alleged, that on the 9th day of June, 1855, there was entered into between the United States and the Yakima Nation of Indians, a treaty, and these defendants beg leave to refer to the treaty itself for the terms thereof. These defendants deny that within the territorial limits of the lands ceded to the Indians by the said treaty or reserved for their exclusive use, benefit or occupancy, there was included any of the lands described in the amended bill of complaint or the exhibit thereto annexed; and admit that all of the lands therein referred to were included either within the primary or indemnity limits of the said grant made to the Northern Pacific Railroad Company, predecessor in interest of defendant Northern Pacific Railway Company, and admit that the map of definite location opposite the lands in suit was filed by the Northern Pacific Railroad Company, as alleged in the bill.

Further answering, these defendants say that from the date of the said treaty in 1855 down to the year 1890, it was settled by continuous and uniform practice and adjudication in all departments of the

United States Government that the boundaries of the Yakima Indian reservation as described in the treaty did not include the lands referred to in the amended bill of complaint. In conformity with such uniform practice and adjudication, the land department of the United States, well knowing all the facts, executed and delivered to defendant Northern Pacific Railway Company the patents referred to in the amended bill of complaint. The United States in this manner on June 6th, 1896, patented to the Northern Pacific Railroad Company, the predecessor in interest of the Northern Pacific Railway Company, all of Section One (1), Township Six (6) North, Range Fifteen (15) East, and said defendant Northern Pacific Railway Company is a *bona fide* purchaser for value of said land, having bought and paid for the same at full value at foreclosure sale in August, 1896, under mortgages executed by the Northern Pacific Railroad Company and before the filing of the amended bill of complaint herein, and on February 9, 1903, these answering defendants purchased said described land from said Northern Pacific Railway Company for a valuable consideration and are *bona fide* purchasers thereof in good faith for value.

These defendants further say that as to all of said land so purchased by them and patented as aforesaid, to the said Northern Pacific Railroad Company, more than six years before the filing of the bill of complaint herein, patent was issued for said land and the right to maintain this suit is barred by the statute of limitations.

These defendants further allege that said Section One, Township Six North, Range Fifteen East, purchased by them as aforesaid, does not fall within the territorial limits of the lands reserved to the Indians by said treaty as shown by any of the surveys referred to in the amended bill of complaint.

These defendants deny that said Section One, Township Six North, Range Fifteen East, purchased by them and patented as aforesaid, was patented upon any erroneous or mistaken belief, and deny that the belief that said land or the lands referred to in the amended bill were without the territorial limits of the lands reserved to the Indians by said treaty, was induced by any defective survey. On the contrary, these defendants say that the survey, established and recognized from the time of the treaty down to the year 1890, and by which survey the lands in question fell without the limits of the reservation, was a correct survey and conformed to the calls of the treaty; and that the resurvey made in 1890, relied upon in the amended bill of complaint, is incorrect and does not follow the calls of the treaty. Not only were the early surveys of the limits of the reservation (which surveys showed all the lands in suit as outside those limits) correct, but they were, as before stated, adjudicated and established to be correct by many years of continuous practice and decision of the United States.

These defendants have no knowledge or information as to whether, as alleged, the Yakima Indians have at no time consented to or acquiesced in the claims of these defendants or their codefendants, or

the issuing of patents to said Northern Pacific Railway Company, or as to whether at all times or at what times they have claimed the boundaries of the reservation to be as alleged in the amended bill, and therefore these defendants deny the allegations of the amended bill in that particular.

These defendants are informed and believe that the Secretary of the Interior has requested said Northern Pacific Railway Company to reconvey to the United States the lands referred to in the amended bill, and that said defendant Northern Pacific Railway Company has declined, and does decline, to make such reconveyance, and has asserted, and does assert, that it has full legal and equitable title thereto, except as to those portions sold and conveyed by it to third parties.

Further answering herein, these defendants say that they have full legal and equitable title to said Section One (1), Township Six (6) North, Range Fifteen (15) East, and right to the possession thereof

Further answering herein, these defendants allege that they have no interest in any of the lands referred to in the amended bill of complaint other than as to said Section One, Township Six, North, Range Fifteen East.

Wherefore, these defendants pray to be hence dismissed with their costs.

(Signed) EDWARD J. CANNON,

Solicitor for Defendants Henry Yeackel and ———
Yeackel, His Wife.

[Endorsements]: Due service of within Answer, by receipt of a true copy thereof, admitted this 11th day of May, 1907.

(Signed) A. G. AVERY,
Attorney for Complainant.

Separate Answer of Henry Yeackel et ux. Filed in the U. S. Circuit Court for the Eastern District of Washington, May 11th, 1907. Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YEACKEL,
His Wife, WILBUR S. BADLEY and
———, His Wife, C. D. WISE and ———,
His Wife, R. D. McCULLY, JOHN J.
ZEHNER, and ———, His Wife,
Defendants.

Separate Answer [of Henry Garner et ux. to Amended Bill].

The Joint Answer of Henry Garner and ——— Garner, his wife, to the Amended Bill of Complaint of the United States of America; which joint answer

is filed herein under and in pursuance of stipulation wherein and whereby these answering defendants are substituted for and in place of John J. Zehner and ——— Zehner, his wife. These defendants admit that they are and have been, as alleged, husband and wife, and residents and citizens of the State of Washington, and are advised that the Northern Pacific Railway Company is and has been, as alleged, a corporation under the laws of the State of Wisconsin, and that the Mercantile Trust Company is and has been, as alleged, a corporation under the laws of the State of New York, and that said Northern Pacific Railway Company, on or about the first of September, 1896, as alleged, became the successor in interest to all the property, rights and interest of the Northern Pacific Railroad Company, a corporation under the Act of Congress of July 2d, 1864, and that among said property and rights were the public lands granted and to be granted by the United States under the said Act of Congress, and amendments thereto.

Further answering, these defendants say it is true, as alleged, that on the 9th day of June, 1855, there was entered into between the United States and the Yakima Nation of Indians, a treaty, and these defendants beg leave to refer to the treaty itself for the terms thereof. These defendants deny that within the territorial limits of the lands ceded to the Indians by the said treaty or reserved for their exclusive use, benefit or occupancy, there was included any of the lands described in the amended bill of complaint or the exhibit thereto annexed; and admit

that all of the lands therein referred to were included either within the primary or indemnity limits of the said grant made to the Northern Pacific Railroad Company, predecessor in interest of defendant Northern Pacific Railway Company, and admit that the map of definite location opposite the lands in suit was filed by the Northern Pacific Railroad Company, as alleged in the bill.

Further answering, these defendants say that from the date of the said treaty in 1855 down to the year 1890, it was settled by continuous and uniform practice and adjudication in all departments of the United States Government that the boundaries of the Yakima Indian reservation as described in the treaty did not include the lands referred to in the amended bill of complaint. In conformity with such uniform practice and adjudication, the land department of the United States, well knowing all the facts, executed and delivered to defendant Northern Pacific Railway Company the patents referred to in the amended bill of complaint. The United States in this manner on June 6th, 1896, patented to the Northern Pacific Railroad Company, the predecessor in interest of the Northern Pacific Railway Company, all of Section Thirteen (13) Township Six (6) North, Range Fifteen (15) East, and said defendant Northern Pacific Railway Company is a *bona fide* purchaser for value of said land, having bought and paid for the same at full value at foreclosure sale in August, 1896, under mortgages executed by the Northern Pacific Railroad Company and before the filing of the amended bill of complaint herein, and

on June 16, 1902, these answering defendants purchased said described land from said Northern Pacific Railway Company for a valuable consideration and are *bona fide* purchasers thereof in good faith for value.

These defendants further say that as to all of said land so purchased by them and patented as aforesaid, to the said Northern Pacific Railroad Company, more than six years before the filing of the bill of complaint herein, patent was issued for said land and the right to maintain this suit is barred by the statute of limitations.

These defendants further allege that said Section Thirteen, Township Six North, Range Fifteen East, purchased by them as aforesaid, does not fall within the territorial limits of the lands reserved to the Indians by said treaty as shown by any of the surveys referred to in the amended bill of complaint.

These defendants deny that said Section Thirteen, Township Six North, Range Fifteen East, purchased by them and patented as aforesaid, was patented upon any erroneous or mistaken belief, and deny that the belief that said land or the lands referred to in the amended bill were without the territorial limits of the lands reserved to the Indians by said treaty, was induced by any defective survey. On the contrary, these defendants say that the survey, established and recognized from the time of the treaty down to the year 1890, and by which survey the lands in question fell without the limits of the reservation, was a correct survey and conformed to the calls of the treaty; and that the resurvey made

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in 1890, relied upon in the amended bill of complaint, is incorrect and does not follow the calls of the treaty. Not only were the early surveys of the limits of the reservation (which surveys showed all the lands in suit as outside those limits) correct, but they were, as before stated, adjudicated and established to be correct by many years of continuous practice and decision of the United States.

These defendants have no knowledge or information as to whether, as alleged, the Yakima Indians have at no time consented to or acquiesced in the claims of these defendants or their codefendants, or the issuing of patents to said Northern Pacific Railway Company, or as to whether at all times or at what times they have claimed the boundaries of the reservation to be as alleged in the amended bill, and therefore these defendants deny the allegations of the amended bill in that particular.

These defendants are informed and believe that the Secretary of the Interior has requested said Northern Pacific Railway Company to reconvey to the United States the lands referred to in the amended bill and that said defendant Northern Pacific Railway Company has declined and does decline to make such reconveyance and has asserted and does assert that it has full legal and equitable title thereto, except as to those portions sold and conveyed by it to third parties.

Further answering herein, these defendants say that they have full legal and equitable title to said Section Thirteen (13), Township Six (6) North,

Range Fifteen (15) East, and right to the possession thereof.

Further answering herein, these defendants allege that they have no interest in any of the lands referred to in the amended bill of complaint other than as to said Section Thirteen, Township Six, North, Range Fifteen East.

Wherefore, these defendants pray to be hence dismissed with their costs.

(Signed) EDWARD J. CANNON,
Solicitor for Defendants Henry Garner and ———
Garner, His Wife.

[Endorsements]: Separate Answer of Defendants Henry Garner et ux. Filed in the U. S. Circuit Court for the Eastern District of Washington, May 11th, 1910. Frank C. Nash, Clerk.

Due service of the within answer by receipt of a true copy thereof admitted this 11th day of May, 1907.

(Signed) A. G. AVERY,
Attorney for Complainant.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

**NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YEACKEL,
His Wife, WILBUR S. BADLEY and
———, His Wife, C. D. WISE and ———,
His Wife, R. D. McCULLY, JOHN J.
ZEHNER, and ———, His Wife,**

Defendants.

**Separate Answer [of C. D. Wise et ux. et al. to
Amended Bill].**

The Joint Answer of C. D. Wise and ——— Wise,
his wife, and R. D. McCully, to the Amended Bill
of Complaint of the United States of America:

Defendants C. D. Wise and ——— Wise, admit
that they are and have been, as alleged, husband and
wife, and these answering defendants admit that
they are residents and citizens of the State of Wash-
ington, and are advised that the Northern Pacific
Railway Company is and has been, as alleged, a cor-
poration under the laws of the State of Wisconsin,
and that the Mercantile Trust Company is and has
been, as alleged, a corporation under the laws of the

State of New York, and that said Northern Pacific Railway Company, on or about the first of September, 1896, as alleged, became the successor in interest to all the property, rights and interest of the Northern Pacific Railroad Company, a corporation under the Act of Congress of July 2d, 1864, and that among said property and rights were the public lands granted and to be granted by the United States under the said Act of Congress, and amendments thereto.

Further answering, these defendants say it is true, as alleged, that on the 9th day of June, 1855, there was entered into between the United States and the Yakima Nation of Indians, a treaty, and these defendants beg leave to refer to the treaty itself for the terms thereof. These defendants deny that within the territorial limits of the lands ceded to the Indians by the said treaty or reserved for their exclusive use, benefit or occupancy, there was included any of the lands described in the amended bill of complaint or the exhibit thereto annexed; and admit that all of the lands therein referred to were included either within the primary or indemnity limits of the said grant made to the Northern Pacific Railroad Company, predecessor in interest of defendant Northern Pacific Railway Company, and admit that the map of definite location opposite the lands in suit was filed by the Northern Pacific Railroad Company, as alleged in the bill.

Further answering, these defendants say that from the date of the said treaty in 1855 down to the year 1890, it was settled by continuous and uniform

practice and adjudication in all departments of the United States Government that the boundaries of the Yakima Indian reservation as described in the treaty did not include the lands referred to in the amended bill of complaint. In conformity with such uniform practice and adjudication, the land department of the United States, well knowing all the facts, executed and delivered to defendant Northern Pacific Railway Company the patents referred to in the amended bill of complaint. The United States in this manner on June 6th, 1896, patented to the Northern Pacific Railroad Company, the predecessor in interest of the Northern Pacific Railway Company, all of Section Nine (9), Township Six (6) North, Range Fifteen (15) East, and said defendant Northern Pacific Railway Company is a *bona fide* purchaser for value of said land, having bought and paid for the same at full value at foreclosure sale in August, 1896, under mortgages executed by the Northern Pacific Railroad Company and before the filing of the amended bill of complaint herein, and on February 8, 1902, these answering defendants purchased said described land from said Northern Pacific Railway Company for a valuable consideration and are *bona fide* purchasers thereof in good faith for value.

These defendants further say that as to all of said land so purchased by them and patented as aforesaid, to the said Northern Pacific Railroad Company, more than six years before the filing of the bill of complaint herein, patent was issued for said land and the right to maintain this suit is barred by the

statute of limitations.

These defendants further allege that said Section Nine, Township Six North, Range Fifteen East, purchased by them as aforesaid, does not fall within the territorial limits of the lands reserved to the Indians by said treaty as shown by any of the surveys referred to in the amended bill of complaint.

These defendants deny that said Section Nine, Township Six North, Range Fifteen East, purchased by them and patented as aforesaid, was patented upon any erroneous or mistaken belief, and deny that the belief that said land or the lands referred to in the amended bill were without the territorial limits of the lands reserved to the Indians by said treaty, was induced by any defective survey. On the contrary, these defendants say that the survey, established and recognized from the time of the treaty down to the year 1890, and by which survey the lands in question fell without the limits of the reservation, was a correct survey and conformed to the calls of the treaty; and that the resurvey made in 1890, relied upon in the amended bill of complaint, is incorrect and does not follow the calls of the treaty. Not only were the early surveys of the limits of the reservation (which surveys showed all the lands in suit as outside those limits) correct, but they were, as before stated, adjudicated and established to be correct by many years of continuous practice and decision of the United States.

These defendants have no knowledge or information as to whether, as alleged, the Yakima Indians have at no time consented to or acquiesced in the

claims of these defendants or their codefendants, or the issuing of patents to said Northern Pacific Railway Company, or as to whether at all times or at what times they have claimed the boundaries of the reservation to be as alleged in the amended bill, and therefore these defendants deny the allegations of the amended bill in that particular.

These defendants are informed and believe that the Secretary of the Interior has requested said Northern Pacific Railway Company to reconvey to the United States the lands referred to in the amended bill and that said defendant Northern Pacific Railway Company has declined, and does decline, to make such reconveyance, and has asserted, and does assert, that it has full legal and equitable title thereto, except as to those portions sold and conveyed by it to third parties.

Further answering herein, these defendants say that they have full legal and equitable title to said Section Nine, Township Six (6) North, Range Fifteen (15) East, and right to the possession thereof.

Further answering herein, these defendants allege that they have no interest in any of the lands referred to in the amended bill of complaint other than as to said Section Nine, Township 6, North, Range Fifteen East.

Wherefore, these defendants pray to be hence dismissed with their costs.

(Signed) EDWARD J. CANNON,
Solicitor for Defendants C. D. Wise and ———,
His Wife, and for R. D. McCully.

[Endorsements]: Due service of within Answer by receipt of a true copy thereof, admitted this 11th day of May, 1907.

(Signed) A. G. AVERY,
Atty. for Complainant.

Separate Answer of C. D. Wise et ux. and R. D. McCully. Filed in the U. S. Circuit Court for the Eastern District of Washington, May 11, 1907. Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MEROANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and ——— YEACKEL,
His Wife, WILBUR S. BADLEY and
———, His Wife, C. D. WISE and ———,
His Wife, R. D. McCULLY, JOHN J.
ZEHNER, and ———, His Wife,
Defendants.

Separate Answer [of Wilbur S. Badley et ux. to Amended Bill].

The Joint Answer of Wilbur S. Badley and ——— Badley, his wife, to the Amended Bill of Complaint of the United States of America:

These defendants admit that they are and have been, as alleged, husband and wife, and residents and citizens of the State of Washington, and are advised that the Northern Pacific Railway Company is and has been, as alleged, a corporation under the laws of the State of Wisconsin, and that the Mercantile Trust Company is and has been, as alleged, a corporation under the laws of the State of New York, and that said Northern Pacific Railway Company, on or about the first of September, 1896, as alleged, became the successor in interest to all the property, rights and interest of the Northern Pacific Railroad Company, a corporation under the Act of Congress of July 2d, 1864, and that among said property and rights were the public lands granted and to be granted by the United States under the said Act of Congress, and amendments thereto.

Further answering, these defendants say it is true, as alleged, that on the 9th day of June, 1885, there was entered into between the United States and the Yakima Nation of Indians, a treaty, and these defendants beg leave to refer to the treaty itself for the terms thereof. These defendants deny that within the territorial limits of the lands ceded to the Indians by the said treaty or reserved for their exclusive use, benefit or occupancy, there was included any of the lands described in the amended bill of complaint or the exhibit thereto annexed; and admit that all of the lands therein referred to were included either within the primary or indemnity limits of the said grant made to the Northern Pacific Railroad Company, predecessor in interest of defendant

Northern Pacific Railway Company, and admit that the map of definite location opposite the lands in suit was filed by the Northern Pacific Railroad Company, as alleged in the bill.

Further answering, these defendants say that from the date of the said treaty in 1855 down to the year 1890, it was settled by continuous and uniform practice and adjudication in all departments of the United States Government that the boundaries of the Yakima Indian reservation as described in the treaty did not include the lands referred to in the amended bill of complaint. In conformity with such uniform practice and adjudication, the land department of the United States, well knowing all the facts, executed and delivered to defendant Northern Pacific Railway Company the patents referred to in the amended bill of complaint. The United States in this manner on June 6th, 1896, patented to the Northern Pacific Railroad Company, the predecessor in interest of the Northern Pacific Railway Company, all of Section Five (5), Township Six (6) North, Range Fifteen (15) East, and said defendant Northern Pacific Railway Company is a *bona fide* purchaser for value of said land, having bought and paid for the same at full value at foreclosure sale in August, 1896, under mortgages executed by the Northern Pacific Railroad Company and before the filing of the amended bill of complaint herein, and on March 13, 1902, these answering defendants purchased said described land from said Northern Pacific Railway Company for a valuable consideration and are *bona fide* purchasers thereof in good faith for value.

These defendants further say that as to all of said land so purchased by them and patented as aforesaid, to the said Northern Pacific Railroad Company, more than six years before the filing of the bill of complaint herein, patent was issued for said land and the right to maintain this suit is barred by the statute of limitations.

These defendants further allege that said Section Five, Township Six North, Range Fifteen East, purchased by them as aforesaid, does not fall within the territorial limits of the lands reserved to the Indians by said treaty as shown by any of the surveys referred to in the amended bill of complaint.

These defendants deny that said Section Five, Township Six North, Range Fifteen East, purchased by them and patented as aforesaid, was patented upon any erroneous or mistaken belief, and deny that the belief that said land or the lands referred to in the amended bill were without the territorial limits of the lands reserved to the Indians by said treaty, was induced by any defective survey. On the contrary, these defendants say that the survey, established and recognized from the time of the treaty down to the year 1890, and by which survey the lands in question fell without the limits of the reservation, was a correct survey and conformed to the calls of the treaty; and that the resurvey made in 1890, relied upon in the amended bill of complaint, is incorrect and does not follow the calls of the treaty. Not only were the early surveys of the limits of the reservation (which surveys showed all the lands in suit as outside those limits) correct, but

they were, as before stated, adjudicated and established to be correct by many years of continuous practice and decision of the United States.

These defendants have no knowledge or information as to whether, as alleged, the Yakima Indians have at no time consented to or acquiesced in the claims of these defendants or their codefendants, or the issuing of patents to said Northern Pacific Railway Company, or as to whether at all times or at what times they have claimed the boundaries of the reservation to be as alleged in the amended bill, and therefore these defendants deny the allegations of the amended bill in that particular.

These defendants are informed and believe that the Secretary of the Interior has requested said Northern Pacific Railway Company to reconvey to the United States the lands referred to in the amended bill, and that said defendant Northern Pacific Railway Company has declined, and does decline, to make such reconveyance, and has asserted, and does assert, that it has full legal and equitable title thereto, except as to those portions sold and conveyed by it to third parties.

Further answering herein, these defendants say that they have full legal and equitable title to said Section Five, Township Six (6) North, Range Fifteen (15) East, and right to the possession thereof.

Further answering herein, these defendants allege that they have no interest in any of the lands referred to in the amended bill of complaint other than as to said Section Five, Township Six, North, Range Fifteen East.

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Wherefore, these defendants pray to be hence dismissed with their costs.

(Signed) EDWARD J. CANNON,
Solicitor for Defendants Wilbur S. Badley and
——— Badley, His Wife.

[Endorsements]: Due service of the within Answer by receipt of a true copy thereof admitted this 11th day of May, 1907.

(Signed) A. G. AVERY,
Attorney for Complainant.

Separate Answer of Wilbur S. Badley et ux. Filed in the U. S. Circuit Court for the Eastern District of Washington, May 11th, 1907. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY (a
Corporation), et al.,

Defendants.

**Replication to the Answer of Defendant Northern
Pacific Railway Company, a Corporation.**

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said

defendant—, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant—, and that the answer of said defendant— is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to ever maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,

United States Attorney,

(Signed) J. B. LINDSLEY,

Assistant United States Attorney,

Solicitors for United States.

[Endorsements]: Personal service of the within replication is hereby admitted at Spokane, Washington, this 11th day of November, A. D. 1907.

(Signed) EDWARD J. CANNON,

Attorney for said Defendant—.

Replication to Answer of Defendant Northern Pacific Railway Company. Filed in the U. S. Circuit Court for the Eastern District of Washington, Nov. 12, 1907. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY (a
Corporation), et al.,

Defendants.

**Replication to the Answer of Defendant Northern
Pacific Railroad Company, a Corporation, to
Amended Bill of Complaint.**

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to ever maintain and

prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,
United States Attorney.

[Endorsements]: Received a copy of the within replication, at Spokane, Washington, this 11th day of November, 1907.

(Signed) EDWARD J. CANNON,
Attorney for Defendant.

Replication to Answer of Defendant Northern Pacific Railroad Company to Amended Bill of Complaint. Filed in the U. S. Circuit Court for the Eastern District of Washington, July 8th, 1909. Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

No. 1260.

UNITED STATES OF AMERICA,
Complainant,

VS.

NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), et al.,
Defendants.

Replication to the Answer of Defendant, The Mercantile Trust Company, a Corporation.

This replicant, saving and reserving to itself all and all manner of advantage of exception which

may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant—, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant—, and that the answer of said defendant— is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to ever maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,

United States Attorney,

(Signed) J. B. LINDSLEY,

Assistant United States Attorney,

Solicitors for United States.

[Endorsements]: Personal service of the within replication is hereby admitted at Spokane, Washington, this 11th day of November, A. D., 1907.

(Signed) EDWARD J. CANNON,

Attorney for said Defendant—.

Replication to the Answer of Defendant Mercantile Trust Company, a Corporation. Filed in the U. S. Circuit Court for the Eastern District of Washington, March 27th, 1909. Frank C. Nash, Clerk. By W. H. Hare, Deputy Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY (a
Corporation), et al.,

Defendants.

Replication to the Answer of Defendants Yeackel.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendants, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to ever maintain and prove as this Honorable Court shall

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direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,
United States Attorney,
(Signed) J. B. LINDSLEY,
Assistant United States Attorney,
Solicitors for United States.

[Endorsements]: Personal service of the within replication is hereby admitted at Spokane, Washington, this 11th day of November, A. D. 1907.

(Signed) EDWARD J. CANNON,
Attorney for said Defendant—.

Replication to Answer of Defendants Yeackel. Filed in the U. S. Circuit Court for the Eastern District of Washington, November 12, 1907. Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), et al.,

Defendants.

Replication to the Answer of Defendants Garner.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncer-

tainties and insufficiencies of the answer of said defendants, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to ever maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,

United States Attorney,

(Signed) J. B. LINDSLEY,

Assistant United States Attorney,

Solicitors for United States.

[Endorsements]: Personal service of the within replication is hereby admitted at Spokane, Washington, this 11th day of November, A. D. 1907.

(Signed) EDWARD J. CANNON,

Attorney for said Defendant—.

Replication to Answer of Defendants Garner Filed in the U. S. Circuit Court for the Eastern District of Washington, Nov. 12, 1907. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), et al.,

Defendants.

**Replication to Answer of the Defendants Wise and
McCully.**

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendants, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to ever maintain and prove as this Honorable Court shall

direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,
United States Attorney,
(Signed) J. B. LINDSLEY,
Assistant United States Attorney,
Solicitors for United States.

[Endorsements]: Personal service of the within replication is hereby admitted at Spokane, Washington, this 11th day of November, A. D. 1907.

(Signed) EDWARD J. CANNON,
Attorney for said Defendant—.

Replication to Answer of Defendants Wise and McCully. Filed in the U. S. Circuit Court for the Eastern District of Washington, November 12th, 1907. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), et al.,
Defendants.

Replication to Answer of Defendants Badley.

This replicant, saving and reserving to itself all and all manner of advantage of exception which

may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendants, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to ever maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,

United States Attorney,

(Signed) J. B. LINDSLEY,

Assistant United States Attorney,

Solicitors for United States.

[Endorsements]: Personal service of the within replication is hereby admitted at Spokane, Washington, this 11th day of November, A. D. 1907.

(Signed) EDWARD J. CANNON,

Attorney for said Defendant—.

Replication to Answer of Defendants Badley. Filed in the U. S. Circuit Court for the Eastern District of Washington, Nov. 12, 1907. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Southern Di-
vision.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY

et al.,

Defendants.

**Deposition of E. C. Barnard, Taken on Behalf of the
United States.**

June 25, 26 and 27, 1908.

Published this 19th day of Sept. 1908, by order of
Court on motion of A. G. Avery, U. S. Atty.

FRANK C. NASH,

Clerk.

Sealed Dep. Filed July 14, 1908.

Rec. Filed in the U. S. Circuit Court, Eastern
Dist. of Washington. Sep. 19, 1908.

FRANK C. NASH,

Clerk.

*In the Circuit Court of the United States, for the
Eastern District of Washington, Southern Division.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, HENRY GARNER
and ——— GARNER, His Wife,

Defendants.

Notice [of Taking of Deposition of E. C. Barnard].
To the Above-named Defendants, and to E. J. Can-
non, Your Attorney of Record:

PLEASE TAKE NOTICE, That the complain-
ant herein will take the testimony of E. C. Barnard,
who resides in the city of Denver, in the State of
Colorado, and who resides more than one hundred
miles from the place of trial herein and more than
one hundred miles from any place at which a Circuit
Court of the United States for the Eastern District
of Washington, is appointed to be held by law, at the
final hearing, for use on behalf of the complainant,
before Sanford C. Hinsdale, Esquire, a United

States Commissioner, who is not of counsel nor interested in this cause, at the office of said United States Commissioner, at No. 803 Continental Building, at the corner of Sixteenth and Lawrence Streets in said city of Denver, on the 25th day of June, 1908, at the hour of ten o'clock in the forenoon of said day, and thereafter, from day to day, as the taking of the deposition may be adjourned, and said testimony will be so taken in accordance with the provisions of Sections 863, 864 and 865 of the Revised Statutes of the United States and the Equity Rules.

Dated this 16th day of June, A. D. 1908.

A. G. AVERY,

J. B. LINDSLEY,

Solicitors for Complainant.

I, the solicitor for the defendants in the above-entitled cause, do hereby acknowledge personal service on me, in Spokane, Spokane County, Washington, on the 16th day of June, 1908, of the foregoing notice to take deposition.

EDWARD J. CANNON,

Solicitor for Defendants.

[Endorsements]: No. 1260. Notice.

*In the Circuit Court of the United States, for the
Eastern District of Washington, Southern Division.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, HENRY GARNER
and ——— GARNER, His Wife,

Defendants.

Denver, Colorado, June 25, 1908,
10 o'clock, A. M.

Deposition of E. C. Barnard, a witness for the complainant in the above-entitled action, taken under and pursuant to the written notice hereto attached, to be used upon the trial of said cause, said witness living and residing in the city of Denver, State of Colorado, and more than one hundred miles distant from the place of trial herein.

Appearances:

A. G. AVERY, Esq., United States Attorney, Ap-
pearing for Complainant.

No one appearing for defendants.

An adjournment was then taken until the next

day, June 26, 1908, at one o'clock in the afternoon, to allow defendants' solicitor to appear.

Denver, Colorado, June 26, 1908.

One o'clock, P. M.

Present: Same parties present as before.

The solicitor for defendants not appearing at said last-named hour, the hearing was again continued until three o'clock P. M. of the same day, awaiting the arrival of defendants' solicitor; at which hour, defendants' solicitor not appearing, the Commissioner directed that the taking of the deposition proceed.

[Deposition of E. C. Barnard, for Complainant.]

Whereupon E. C. BARNARD, a witness produced on behalf of the complainant, being carefully examined and duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, gave the following testimony:

Direct Examination.

(By Mr. AVERY.)

Q. Mr. Barnard, what is your full name?

A. Edward Chester Barnard.

Q. You go by the name of E. C. Barnard?

A. I do.

Q. You reside in this city, Denver, Colorado?

A. I do.

Q. What is your occupation or profession?

A. I am a geographer in the United States Geological Survey.

Q. You are now occupying that position?

A. I am.

(Deposition of E. C. Barnard.)

Q. How long have you been connected with the United States Geological Survey?

A. Why, I was employed in July, 1884, as Assistant Topographer in the United States Geological Survey after graduating as a mining engineer from the School of Mines, Columbia College, New York.

Q. You have been in the Geological Service ever since 1884?

A. Continuously. During the years of 1903, '4, '5 and a portion of '6 I was detailed to the State Department as Chief Topographer of the United States and Canada Boundary Survey, locating the international boundary line between the United States and Canada, west of the summit of the Rocky Mountains, and then returned to the regular duties of the Geological Survey in 1906.

Q. Did you state how much of that period you had been geographer?

A. I was appointed geographer about May, 1907.

Q. And before that you were topographer?

A. I was first assistant topographer for four or five years, and then appointed topographer.

Q. Independent of those official positions with the Government, you are a civil and mining engineer?

A. I am a mining engineer.

Q. And have been since when?

A. Since graduating from the School of Mines in 1884.

Q. Well, that includes civil engineering, does it not?

A. To a very considerable extent.

Q. I will ask you, Mr. Barnard, if you know of

(Deposition of E. C. Barnard.)

the Yakima Indian Reservation in the Eastern District of Washington? A. I do.

Q. I will ask you if you ever made a survey of that reservation or any portion of it?

A. In 1898, on my return from a season in Alaska, I received a wire to proceed to Ft. Simcoe, the agency on the North Yakima Reservation, and examine a disputed boundary line, and certain claims that were made by the Indians to the effect that the boundary line as located in 1890 was not the boundary line as designated in the treaty with Governor Stevens.

Q. Were you then directed to make a survey of the reservation?

A. I was directed by the Secretary of the Interior to examine into and report on this matter.

Q. Did you at that time, under that direction, examine the boundary lines of the reservation?

A. That season—it was late in the year—I proceeded to Ft. Simcoe, and with Mr. Lynch, the agent—

Q. The Indian Agent?

A. The Indian Agent,—we drove to a point near Signal Peak.

Q. Let me interrupt you so as to get it chronologically. Were you then acting under the direction of the Secretary of the Interior to make an examination of the boundary? A. I was.

Q. I will ask you, Mr. Barnard, if, under the directions from the Secretary that you have mentioned, you made a survey of the boundary?

(Deposition of E. C. Barnard.)

A. No.

Q. Did you make a survey of any part of the boundary?

A. The witness would like to ask, by the boundary is it supposed to be what was the true boundary or the boundary as established in 1890?

Q. I refer to the boundary under the Yakima treaty.

A. Yes. In 1899 the points were located—

Q. Just state whether you did make that.

A. Yes.

Q. As a result of that examination and survey, did you make a map? A. Yes.

Q. I call your attention to a blue-print map, which bears on its face the name, "Map of Yakima Indian Reservation," and with some other legends, "E. C. Barnard, Topographer," and is also marked "Map No. 1689," under a certificate of the Acting Commissioner of Indian Affairs, C. F. Larrabee," dated "July 8, 1907," and I will ask you if that is a blue-print of the map that you made?

A. It is.

Q. I will ask you if the marks or legends on the map before the words, "Yakima Indian Reservation," being "Existing boundary, Boundary claim of Yakima *Indiana*, Boundary corresponding to wording of treaty, Alternative boundary on Mt. Adams," is a correct description and explanation of the marks that indicate the different lines of the boundary as shown on the map? A. They are.

Q. Now, I will ask you, Mr. Barnard, to indicate

(Deposition of E. C. Barnard.)

as nearly as you can on that map the territory that you traveled over in your examination under the direction of the Secretary.

A. There were two examinations made, a preliminary one in the fall of 1898.

Q. By you?

A. By me, yes. I then went to Ft. Simcoe.

Q. The place marked "Ft. Simcoe"?

A. Yes, sir, on this map; and drove to Signal Peak.

Q. As marked on the map?

A. Signal Peak as marked on the map, which is a commanding point, looking over the area then in dispute. From here we traveled a certain distance along the boundary line.

Q. Which direction, to the north?

A. To the north; it then appeared that the claims of the Indians were just, and a further examination should be made.

(The statement of the witness as to whether the claims of the Indians appeared to be just is objected to by counsel for defendants, upon the ground that the witness states a conclusion, and it is incompetent and immaterial, and that portion of the witness' testimony is moved to be stricken out.)

A. (Continuing.) I then returned to Spokane, and so reported to the Interior Department, and was ordered by wire to return to the field and make an examination that would settle the matter.

(It is requested by counsel for defendants that such writing be produced.)

(Deposition of E. C. Barnard.)

A. (Continuing.) I returned to Ft. Simcoe, and securing the necessary surveying instruments made a preliminary examination and reported to the Department that the claims of the Indians were unquestionably valid.

(Defendants' counsel reserves the right to object to the statement of the witness unless the report be produced, and requests that said report be produced at convenience of complainant's counsel and before complainant's case is closed.)

Q. Let me interrupt you just a moment. I am going to ask you to state what you did in connection with making the map, and for that reason you may, if you like, refresh your recollection from the report that you made at that time.

A. On September 16, 1899—

Q. You organized a party at that time, did you?

A. I organized a party in North Yakima to examine into and determine what was the boundary line as described by Governor Stevens in his treaty with the Indians, and to determine the area, if any, that was outside of the boundary as established in 1890.

Q. Who composed that party?

A. Mr. Wilkins Manning, assistant, John Dyer, packer, William Miller, cook, and Abe Lincoln, a Yakima Indian guide.

Q. What did the party then do?

A. The party proceeded first to Sata's Peak and occupied that as a triangulation station, and then proceeded to Signal Peak. From Signal Peak the

(Deposition of E. C. Barnard.)

party proceeded north along the present boundary which follows a flat ridge—I wish to correct: along the boundary surveyed or established in 1890.

Q. Let me ask you a question. When you speak of the boundary established in 1890—I will put it, the boundary claimed to have been established in 1890,—do you refer to the line on your map which goes from approximately Mile-post 51 Northerly and irregularly to the junction of the South Fork of the Atanum River, and being at a point on the map which I will ask you to mark with a letter “A”; is that right? A. That is correct.

Q. Now, go on.

A. The same line, following a flat ridge with numerous spurs; points were located on this line and other points on the summit of the main Cascade ridge were sighted, and Pisco's Meadows were reached.

Q. Please state where it is, Mr. Barnard.

A. It is near the northwest corner of the reserve line as surveyed in 1890. From Pisco Meadows, the northwest corner of the reserve, which is in a comparatively low gap in the divide, the ridge continues around the headwaters of the Klickitat to Goat Rocks and becomes higher and well defined. From a point on the ridge just beyond the northwest corner of the line as surveyed in 1890 a very good view was obtained of the entire headwaters of the Klickitat and the summit of the Cascade Mountains. Standing at this point and looking west, Abe Lincoln called my attention to the description of the boundary line

(Deposition of E. C. Barnard.)

given me by Chief Spencer in 1898, in which he said the line extended westward from the head of the South Fork of the Atanum River to a sharp point east of Goat Rocks, which point was plainly visible and a well-marked feature in the landscape. From this point Chief Spencer further stated that the boundary line extended to a conical hump on the southeast slope of Mount Adams, which hump is well defined and was plainly visible. From where we stood it did appear that the divide continued from Spencer's Point southward to Mount Adams, but a more extended investigation proved this erroneous.

(Defendants' counsel object to the statement of the witness as to what Chief Spencer said, upon the ground that it is secondary evidence and not the best.)

A. (Continuing.) From Pisco Meadows we descended into the valley of the Klickitat and ascended the right-hand fork, visiting and locating Spencer's Point, and then pushed on to the summit of the Cascades, about ten miles south of Goat Rocks, camping near the old berry patch which is on the east slope of a mountain known by the Indians as Walp, which point we visited and located. It had been my intention to follow the main summit of the Cascades from this point to Mount Adams, but a severe snowstorm coming up we were forced to return to Klickitat valley, and as the storm continued for several days it was impossible to proceed that way, on account of the deep snow.

We now descended the valley of the Klickitat,

(Deposition of E. C. Barnard.)

passing the place where the Indians camped for years on their hunting excursions, and near which is an old cranberry marsh from which they obtained berries. Continuing down the valley on the west side of the Klickitat we finally came to the point where the old Indian trail from Fort Simcoe joins the Goldendale road. This was the place Chief Spencer told me in the fall of 1898 that the agents of the Government had blazed trees to mark the boundary line of the reserve in 1858 or 1859.

(Defendants' counsel object on the ground that it is secondary and not the best evidence, the statement of the Indian to the witness.)

A. (Continuing.) On search two large bull pines were found that showed indications of old blazes, and upon cutting one out and counting the rings it was found that the blaze had been made forty years ago, which would substantiate Chief Spencer's story. This blaze was left with Mr. Lynch, the Indian Agent at Fort Simcoe. From here we crossed the Klickitat River by the bridge and proceeded to Grayback Peak. No traces of any post could be found, but the Indian Stick Joe's description given to me in the fall of 1898 of the point was very characteristic. From this point the conical hump on the southeast slope of Mount Adams was plainly visible. After locating Grayback Peak we journeyed to the eastward, soon coming to the old military road, which we followed to mile-post 29, which was claimed by the Indians as marking a point on the true boundary line of the reserve. Within a hundred feet of this point is a

(Deposition of E. C. Barnard.)

forked pine tree of rather unusual shape which I had before heard of, as claimed by the Indians to mark the boundary line. On a large tree close by was a blaze, and from this tree running to the east up the ridge towards mile-post 51 of the present boundary was a line of blazes about forty years old, which I believed to be the line blazed by the party of Government agents which Stick Joe told me he had accompanied in the year 1860. From mile-post 29 on the military road we proceeded up the ridge to mile-post 51 of the present boundary which was located, and after locating some other points on the boundary line surveyed in 1890 we returned to Ft. Simcoe on October 12th. On this trip the western boundary line of the reserve as surveyed in 1890 was followed for nearly its full length. Spencer's Point, Goat Rocks, the summit of Cascade Mountains from Goat Rocks to Mount Adams, the hump on the southeast slope of Mount Adams, Grayback Peak, and the ridge leading from Grayback Peak to mile-post 51 of the boundary surveyed in 1890 were accurately located, and a reconnoissance map of the area in dispute made.

Q. Is the map that you have before you and that I have heretofore described the map that you made from that investigation? A. It is.

Mr. AVERY.—Mr. Commissioner, I offer this map that I first referred to as the map number 1689 in evidence.

The COMMISSIONER.—It is received in evidence and marked "Exhibit 1, Complainant's Proofs."

(Deposition of E. C. Barnard.)

(Which said map is hereto attached.)

Mr. AVERY.—Q. Now, what more can you say in regard to the evidence of the correctness of that map that you gathered on that trip?

A. In the fall of 1898 Chief Spencer and Stick Joe, two Yakima Indians, had described to me their having been with certain Government agents of Governor Stevens who were indicating the boundary lines of the reserve. Stick Joe had said that in or about 1860 he accompanied a party of Government agents along a portion of the southern boundary line of the reserve. They left the old military road at mile-post 29, this being the point where the reservation line crossed the same. They then proceeded on the line which follows a well-defined ridge to a peak called Grayback Peak, on the summit of which a marked wooden post set in the ground was found. At this point, the surveyor, agent or officer accompanying the party took out a telescope or some surveying instrument, and sighting towards Mount Adams pointed out a conical hump on the southeast slope of the same and told the party that the line now went straight to that point.

(Objected to by counsel for defendants on the ground that it is secondary and not the best evidence, and incompetent and immaterial, and it is only a recital of not only the actions but conclusions of others.)

A. (Continuing.) The party tried to proceed in that direction, but on account of the precipitous nature of the mountain side had to turn back and

(Deposition of E. C. Barnard.)

go around the ridge. This appears to have been as far as the party went at that time. Stick Joe further said that the wooden post seen at Grayback Peak had since disappeared.

Q. Let me ask you a question: *That that* you have narrated since I asked my last question is what Stick Joe and Spencer told you, was it?

A. Yes.

(This narration is the portion of the witness' testimony to which the defendants refer in the last objection.)

A. (Continuing.) The above description of the route followed was given in a graphic way, with gestures, that leads me to believe it was an actual experience. Chief Spencer in the fall of 1898, had told me that Governor Geary, who succeeded Governor Stevens, had described the limits of the reserve to him as follows:

(Objected to by counsel for defendants as being secondary evidence and not the best evidence, and also as incompetent.)

A. (Continuing.) Up the Atanum River from its mouth to the mouth of the South Fork; thence up the South Fork to the head; thence directly west across the Klickitat to a high point just this side of Goat Rocks; thence to a conical hump on the southeast slope of Mount Adams. Chief Spencer further said that he had accompanied Mr. Thompson, Dr. Nowdsen, Indian agent at the time, and a clerk from the Warm Springs Agency over a portion of the southern boundary, and that they blazed

(Deposition of E. C. Barnard.)

some trees at the junction of the wagon road from Goldendale with the trail from Yakima, this point being supposed to be on the line from Grayback Peak to the hump described on the southeast slope of Mount Adams.

In an interview with Stick Joe and Chief Spencer in the fall of 1899, after having made a trip, examining the area in dispute, they told me practically the same story as they had a year previously, Chief Spencer using the name "Townsend" for "Thompson," and on looking up the matter I find that Townsend was agent at the White Salmon Agency in 1858. He also mentioned Mr. Mason's name in connection with this trip, and I found that Mr. Mason was secretary to Governor Stevens and acting Governor of Washington Territory from August 11, to September, 1859.

Q. You may go on.

A. The important clause of this treaty—

Q. You are referring to the Yakima Treaty?

A. The Yakima treaty; —is that the summit of the Cascade Mountains should form part of the western boundary line of the reservation.

(Objected to by counsel for defendants as stating a conclusion.)

A. (Continuing.) Certainly the existing boundary line does not reach the summit of the Cascade Mountains at any point, and I cannot believe that the ridge along which the present boundary line runs was considered the summit at the time the treaty was made, as even then the Indians were in

(Deposition of E. C. Barnard.)

the habit of hunting and gathering berries on what is now well understood to be the summit of the Cascade Mountains.

(Objected to by counsel for defendants as stating a conclusion.)

A. (Continuing.) I would refer to a map; standing on Signal Peak and reading from the treaty, or with the map before us, there is no possible way of making the wording of the treaty agree with the topography of the country. With the evidence, however, collected in the field, corroborating the testimony of Stick Joe and Chief Spencer, who were shown part of the boundary lines by authorized Government agents, it is possible to determine quite accurately what the intention of the treaty was, and where the boundary line of the reservation should be.

(Objected to by counsel for defendants on the ground that it states conclusions, and such conclusions do not appear to be based upon the best evidence.)

A. (Continuing.) From the imperfect topographic knowledge of the country, it was believed that both the Atanum and Pisco Rivers reached to the summit of the Cascade Mountains but such is not the case, although from a distance it would be a fair presumption.

(Objected to by counsel for defendants as stating a conclusion.)

A. (Continuing.) At the time of the setting aside of the reservation, the Indians certainly ex-

(Deposition of E. C. Barnard.)

pected that they would have the berry patches and hunting grounds which they had visited for several years previously in the valleys of the Klickitat secured to them, especially the region in the vicinity of Goat Rocks where mountain goats abound and the berry patches in the vicinity of Walp.

(Objected to by counsel for defendants as stating a conclusion, and as incompetent.)

A. (Continuing.) The head of the South Fork of the Atanum River does not reach the summit of the Cascade Mountains by some twenty miles, and the treaty calls for the main ridge of the Cascade Mountains for the west boundary line of the reserve. Therefore, this boundary line must either follow the ridge around to Goat Rocks or extend in a straight line to Spencer's Point; the latter is the boundary line claimed by the Indians to have been pointed out to them some time in the vicinity of 1860.

(Objected to by counsel for defendants as not the best evidence.)

A. (Continuing.) From the nature of the country it was supposed that from Spencer's Point there was a continuous ridge to the hump on the southeast slope of Mount Adams. This was found to be untrue on further examination, and the boundary as described in the treaty should follow the main summit of the Cascade Mountains around to the hump on the southeast slope. There seems to be no difference of opinion that the portion of the south boundary line on the reserve must be a straight line from the hump on the southeast slope of Mount

(Deposition of E. C. Barnard.)

Adams to Grayback Mountain, and thence continuing eastward along the ridge from Grayback Peak to mile-post 51.

(Objected to by counsel for defendants as calling for a conclusion, and apparently based upon information not contained in the witness' testimony or the record.)

A. (Continuing.) The blazed trees at the junction of the Indian trail with the Goldendale road falls south of the line from the hump on the south-east slope of Mount Adams and Grayback Mountain some two miles, but this is not surprising as that portion of the line was never surveyed and is a very close approximation, considering the nature of the country. It is my opinion the blazes found at this point established the presumption that a straight line from Grayback Peak to the hump on Mount Adams was a portion of the southern boundary line of the reservation.

(Objected to by counsel for defendants as stating the witness' conclusion.)

A. (Continuing.) The forked tree and line of blazes extending up the ridge from mile-post 29 on the old military road are ample evidence that this ridge was part of the intended southern boundary. Granted that the line started from mile-post 51 of the existing survey 1890 boundary, down the ridge towards Grayback,—and certainly the testimony of Chief Spencer and Stick Joe is strong evidence,—and when strengthened by evidence found from the field, I believe incontestable, the boundary line as in-

(Deposition of E. C. Barnard.)

licated on the map is the only logical one.

(Objected to by counsel for defendants as argumentative and stating a conclusion.)

A. (Continuing.) There is other evidence that up to the time of the survey of the boundary in 1890, the ridge extending westward from mile-post 51 to Grayback Peak was considered the southern boundary of the reservation, as prior to that date when Father Wilbur was agent, the Indians received rent for grazing lands in Cedar Valley from white settlers in that vicinity.

Q. Now, Mr. Barnard, what conclusion did you arrive at from your investigation; that is, the effect of the survey of 1890?

(The conclusion of the witness is objected to by counsel for defendants as incompetent and immaterial, and evidently based upon hearsay evidence and unsworn statements of interested parties.)

A. By the survey of 1890, the Indians were deprived of 357,878 acres which, according to the terms of the treaty of 1855 and ratified in 1859, were to have been set aside for their use.

Q. Now, referring to Complainant's Exhibit 1, the line from the letter "A" at the top, going irregularly and southerly and somewhat easterly, is there referred to as the survey of 1890? A. It is.

Q. Now, I call your attention to the different natural objects that you have just spoken of in your testimony as Spencer's Point, and the hump, and Signal Peak, and Grayback Peak, and Goat Rocks, Walp, and so forth; are those in the position indi-

(Deposition of E. C. Barnard.)

cated on Complainant's Exhibit 1 as there placed?

A. They are.

Q. When you speak of mile-post 51, what line of mile-posts have you reference to, Governmental mile-posts on the southern boundary?

A. Those are the boundary mile-posts as established by the survey of 1890, as I understand.

Q. Or at least they existed there prior to your day?

A. They were in existence when I made the examination.

Q. They were coming along the southerly border of the reservation as shown on exhibit 1, westward?

A. They were.

Q. And they commenced numbering to the east some place, I suppose? A. Yes.

Q. What did you refer to when you said mile-post 29? Did that have any reference to the mile-posts I was just speaking of, of which 51 was one?

A. No.

Q. What was mile-post 29?

A. Mile-post 29 was a mile-post on the military wagon road.

Q. Is it on the wagon road that on this map is marked "Old Military Road?" A. It is.

Q. And has nothing to do with the Government mile-posts? A. No.

Q. That is, reservation mile-posts?

A. No.

Q. Now, taking between the place on the map which says, "Mile-post 29," and the other place

(Deposition of E. C. Barnard.)

which says, "Mile-post 51," I will ask you if there were any mile-posts or blazes or anything between those two points?

A. There was a well-defined line of blazes between those points, but no posts were seen.

Q. Well, they were blazes going westwardly; they were blazes that didn't have anything to do with the old military road?

A. None whatsoever.

Q. Did they or not appear to be a continuation of the series of signs or posts of which number 51 was one?

A. They were a series of blazes that had evidently been made coming from the eastward, coming down to the old military road, down this ridge.

Q. Did those blazes or not aim, or were they directed approximately, toward mile-post 51?

A. I should say the reverse; that they were directed from mile-post 51 to mile-post 29.

Q. What I wanted to get is whether they were directed to that—

A. They indicated the direction.

Q. They indicated the direction; I see. Now, referring to the blaze which you found at the junction of the Indian trail and the Goldendale road, Mr. Barnard, how did you take that blaze out? You said you cut it out.

A. John Dyer was an expert ax-man, and he cut in some six inches above the blaze and then on the sides, so it was taken out completely, taking an additional portion of the tree with it.

(Deposition of E. C. Barnard.)

Q. Now, were there or not any marks or figures or anything on that blaze?

A. Not noticeably.

Q. Not noticeably. I want to ask you why you think that it was forty years old,—the blaze?

A. Because, by counting the number of rings that had been made since the blaze was made.

Q. You say that you left that with agent Lynch?

A. Yes; it was left with Mr. Lynch.

Q. Did you find any other blazes up there at or near the line which you say is the direct line of the reservation that had marks or signs on them?

A. Near mile-post 29 on the military road was a very plain blaze, a copy of which may be found in my report to the Secretary on this subject.

Q. Do you recall, or can you by refreshing your memory state the kind of marks they were, even if you cannot state their relative location?

A. It was a circular blaze, in the upper left-hand corner of which was the letter "S," a line drawn below it and the figure "16" below that. Just opposite the figure "16" and to the right was an ellipse, with the axis horizontal. Below this and further to the right were the figures "1886," with the letter "R" below. At the extreme base of the blaze were the figures "1869."

Q. Was there any letter on the blaze above the "R"?

A. Above the "1886" was an "I."

Q. That is also above the "R," isn't it?

A. It led me to believe that this blaze indicated "Indian Reservation."

(Deposition of E. C. Barnard.)

Q. What are the usual signs or marks to indicate an Indian boundary or reservation?

A. The letters "I. R." on the monuments would naturally stand for "Indian Reservation"; and it is my impression that this blaze was pointing toward the agency.

Q. Now, calling your attention to the line which seems to indicate the survey of 1890, about which you have spoken, I will ask you whether or not that line traverses a high ridge of mountains, or if it does not, what is the topography of the land which it does traverse?

A. It is a flat,—a rather flat rolling, indefinite ridge, that through the timber is very difficult to follow.

Q. All of that country in there from the sea level is quite high, isn't it?

A. The elevation at mile-post 51 is 5,800 feet, approximately, which drops down to from 3,400 to 4,000 feet in the vicinity of Signal Peak, rising again to 5,800 feet at the head of the South Fork of the Atanum.

Q. What point did you say that when standing at it seemed as if the South Fork of the Atanum reached the Cascade Mountains, the main ridge?

A. Signal Peak.

Q. Signal Peak. On this Exhibit 1, what portion did you find to be good berrying ground or to contain berry patches?

A. In the vicinity of Walp, on the main crest of the Cascades.

(Deposition of E. C. Barnard.)

Q. You mean by that somewhat south of Walp and near there?

A. Yes, on the south and east slope.

Q. Where are the good hunting grounds up there? A. In the vicinity of Goat Rocks.

Q. Who are Stick Joe and Chief Spencer, Mr. Barnard?

A. They were very old Indians of the Yakima tribe, who were sent for by Agent Lynch in 1898 and again in 1899, to describe the boundary lines of the reservation as known to them.

Q. Now, I can call your attention to what is endorsed and purports to be a topographical map, made by the United States Geological Survey, and is said to embrace the Mount Adams Quadrangle in the State of Washington; it also purports to have been made by A. H. Sylvester in 1903 and 1904, and I will ask you whether or not that is a correct or an approximately correct map of such part of the reservation and adjoining country as it purports to cover? A. It is.

Mr. AVERY.—I offer this, Mr. Commissioner, in evidence.

(Map received in evidence and marked "Exhibit 2, Complainant's Proofs.")

(Counsel for defendants reserves an objection to map until opportunity is given to prove its authenticity.)

Q. I will ask you, Mr. Barnard, whether or not the pencil mark, commencing outside of the margin on the right, and going northerly and somewhat

(Deposition of E. C. Barnard.)

westerly up to about the South Fork of the Atanum, and being the only pencil line on the map, indicates approximately the survey of 1890?

A. It does.

Q. In so far as that part of the land is within the map?

A. It does.

Q. From your investigation and survey that you made in 1898 and 1899, would you say that that was a correct map of the topography and the geography; I mean, say, of that part of the country which it purports to cover?

A. I should say it was.

Q. What kind of surveying instruments or paraphernalia did you use in making your survey that you have referred to?

A. Plane-table, and telescopic alidade.

Q. Any other instruments?

A. Steel tape; a magnetic compass, and an aneroid barometer.

Q. Are those instruments modern improved ones for the purpose for which you used them?

A. They are.

Q. And were in accurate and correct condition for the purpose?

A. They were.

Q. Did you or not make a report of your doings, under the direction of the Secretary, Mr. Barnard?

A. I did.

Q. To whom did you direct that report?

A. To Mr. R. U. Goode, I think.

Q. What position did he then occupy in the Government?

A. He was then Geographer in the United States

(Deposition of E. C. Barnard.)

Geological Survey.

Q. The report you made was an official one, I assume? A. It was.

Q. I call your attention to a printed pamphlet, which is headed, "56th Congress, 1st Session. House of Representatives, Document No. 621"; with a heading, "Yakima Indian Reservation," and further, "Letter from the Secretary of the Interior, transmitting, with the draft of a bill, copy of a communication from the Commissioner of Indian Affairs, relative to the boundary of Yakima Indian Reservation," and ask you if the printed report which is embodied in that pamphlet is the report which you made and is the one which you have just referred to?

A. It is.

Q. I call your attention to the fact that your report commences on page 6 of that pamphlet, and ask you if the statements that you made in that report are true?

A. To the best of knowledge and belief they are.

Mr. AVERY.—Now, Mr. Commissioner, I offer in evidence the pamphlet that I have just described.

(Objected to by counsel for defendants on the ground that it contains conclusions reached by the witness, based upon secondary and hearsay testimony and evidence, and such conclusions are incompetent and immaterial.)

(The pamphlet was received in evidence by the commissioner and marked, "Exhibit 3, Complainant's Proofs," and is hereto attached.)

Mr. AVERY.—In offering this pamphlet in evi-

(Deposition of E. C. Barnard.)

dence, I desire it to go in evidence as a whole, and I also desire that the different parts of the pamphlet go in as part of the complainant's proof, to wit, the letter on the first page to the Speaker of the House of Representatives, from Secretary Hitchcock; the letter commencing on page 1 to the Secretary of the Interior, from the acting Commissioner; the letter commencing on page 2 to the Secretary of the Interior from Commissioner Jones; the letter commencing on page 5, to the Secretary of the Interior, from Charles D. Wolcott, Director of the United States Geological Survey; the letter commencing on page 6, to the Director of the United States Geological Survey, from R. U. Goode, Geographer; the report commencing on page 6, directed to Mr. R. U. Goode, Geographer, United States Geological Survey, and signed by E. C. Barnard, Topographer; the letter commencing on page 9, directed to the Commissioner of Indian Affairs, and signed by E. A. Hitchcock, Secretary; the letter commencing on page 10, directed to the Secretary of the Interior, and signed by W. A. Jones, Commissioner of Indian Affairs, and the proposed bill on page 13. I also desire to go in as part of complainant's proof and evidence the map numbered 1689, purporting to have been made by E. C. Barnard, Topographer, and purporting to be a survey of the Yakima Indian Reservation, being at the end of the pamphlet. As first stated, I offer the pamphlet as a whole, and I offer separately each one of the papers above described.

(Counsel for defendants objects to each of the let-

(Deposition of E. C. Barnard.)

ters, documents and maps, upon the same grounds stated in the objection to the whole of the pamphlet.)

Q. Mr. Barnard, I call your attention to the map at the end of Exhibit 3, just referred to, and ask you if that is a correct map of the Yakima Indian Reservation that you have been testifying about, in the Eastern District of the State of Washington?

A. It is.

Q. Is that or not the map that you made?

A. It is.

Q. That is on a somewhat different scale, is it not?

A. Yes.

Q. From the map that was first put in evidence as Complainant's Exhibit 1?

A. Yes. It was a reduced scale; it is a reduction of the same map.

Q. Otherwise it is the same map, is it?

A. In every detail.

Mr. AVERY.—I wish it understood that, in putting in this pamphlet that has been marked "Complainant's Exhibit 3," that the so-called White Swan map which is annexed thereto is not to be considered as limiting the Government's claim in respect to the amount of the land in the Indian Reservation, but it is put in evidence for the purpose of showing that the reservation, made in the treaty between the Government and the Yakima and other Indians in 1855, extended to the Cascade Mountains, and it is not put in evidence for the purpose of establishing with accuracy or precision the southwestern boundary of the reservation.

(Deposition of E. C. Barnard.)

Q. Referring again, Mr. Barnard, to the map number 1689, your map, at the end of the pamphlet, Exhibit 3, I will ask you what the red line indicates thereon?

A. Indicates, generally, the western, northern and southern boundary line of the Yakima Indian Reservations, as understood by the Indians in 1860.

(Counsel for defendants objects to last portion of answer as stating a conclusion.)

Q. And as existing to-day?

(Objected to by counsel for defendants as calling for a conclusion.)

A. And as existing to-day.

Q. What do the green lines indicate?

A. The green lines represent what in my opinion was the intention of the treaty of 1855.

Q. You speak about what in your opinion was the intention; do you mean by that, what, under the terms of the treaty, was actually covered?

(Objected to by counsel for the defendants as calling for a conclusion.)

A. What, under the terms of the treaty, was actually the intent of Governor Stevens in limiting the Reservation boundary line.

Q. You think that that green line is the only line that would indicate the amount of the reservation from the wording of the treaty?

(Objected to by counsel for defendants, as calling for a conclusion.)

A. That is my belief, after a most careful examination on the ground.

(Deposition of E. C. Barnard.)

Q. Referring to Complainant's Exhibit 2, where is Spencer's Point?

A. (Witness indicates.) The point I would mark "A."

Q. The point you mark "A"? A. Yes.

Q. Standing at Spencer's Point, on that point what is the appearance down here, in a southerly direction towards Mount Adams, of the country; that is, does it indicate that there is a line of ridges from there down? A. No.

Q. What is the appearance?

A. Well, looking directly south you see the valley of the Klickitat.

Q. Yes.

A. And then there are a number of—the country is wooded and it was indefinite. However, standing at the head of the South Fork of the Atanum River, it does look very much as though there was a continuous divide, extending from Spencer's Point to the hump on the southeast slope of Mount Adams.

Mr. AVERY.—I wish to say, Mr. Commissioner, that in offering this in evidence, Exhibit 2, I desire to offer the explanation and directions and legends and everything else on the opposite side.

The COMMISSIONER.—Opposite side of the map.

Mr. AVERY.—It goes to its explanation.

Q. Mr. Barnard, the report which is part of the pamphlet, Exhibit 3, was made by you on the day that it purports to have been made and dated; that

(Deposition of E. C. Barnard.)

is, on January 12, 1900? A. It was.

Q. The Yakima Reservation that you have referred to, and which you examined, is in the Eastern District of the State of Washington, is it not?

A. It is.

Q. Mr. Barnard, are the lands which are described in the complaint, within the boundary lines of the Reservation as surveyed by you (showing witness original *lis pendens* in this action, filed January 11, 1907, and recorded in Volume 52 of Deeds, page 196, Records of Yakima County, Washington)?

A. They are, with the following exceptions, which could only be determined on field examination:

The northeast one-quarter of the southeast one-quarter, and the south one-half of the southeast one-quarter, in section 11, township 7 north, range 12 east;

The lots 1, 2, 3 and 4, section 19, township 7 north, range 13 east;

All lots described in sections 1 and 11, township 6 north, range 13 east;

All of section 13, township 6 north, range 15 east.

It would be necessary to examine the township plots, that are not in my possession, to state whether or not the above-described lands are within the reservation boundaries or not.

Q. With those exceptions, I understand you to say the lands described in the complaint are within the boundaries of the reservation as surveyed by you?

A. They are.

(Deposition of E. C. Barnard.)

Q. As to those which you have excepted, I understand you to say you cannot say without having the township plots before you? A. I cannot.

Q. I suppose it is susceptible of finding out in that way? A. It is.

Q. Will you state, Mr. Barnard, what these little fine brown lines are on here? They indicate, do they not, the topography of the country covered by Exhibit 2 (referring to Topographic Map, Exhibit 2)?

A. They are contour lines; that is, lines of equal elevation above the sea level, and show the slope of the country. Where they are close together the country is steep; where further apart, gentle and sloping, and where none exist, practically flat.

Q. What do, in these maps, the figures that are quite frequently found here in brown along the line indicate? A. They indicate the elevation.

Q. Above the sea level?

A. Above the sea level.

Mr. AVERY.—I think that is all.

Testimony closed.

Denver, Colorado, Saturday, June 27, 1908.

10:30 o'clock A. M.

A. G. Avery, United States Attorney, solicitor for complainant, and Edward J. Cannon, Esq., solicitor for the defendants, appeared before the Commissioner, and, at the request of said solicitor for the defendants, the taking of said depositions was opened.

Thereupon complainant's attorney consented that defendants' attorney make such objections to the

(Deposition of E. C. Barnard.)

direct testimony of the witness, E. C. Barnard, as he desired, and that such objections could go into the record as having been made at the time the testimony was given; and defendants' attorney thereupon made the objections in said direct examination noted.

And thereupon the witness, E. C. BARNARD, resumed the stand for further examination, and the hearing proceeded as follows:

Cross-examination.

(By Mr. CANNON.)

Q. Did you attempt to follow the lines indicated on I. I. Stevens' map of March, 1857, contained in Exhibit 3?

A. No.

Q. Indicate on Exhibit 2, Satas Peak.

A. I don't believe Satas Peak would have any special reference to the matter. My impression is it was about in there (indicating). It is the original plane-table shows the location of Satas Peak. It was used as a triangulation station, in order to locate—to get triangulation started.

Q. Now, indicate by putting a "B" there.

A. I have to depend on my memory entirely for this; but, roughly speaking, my recollection is that Satas Peak—it is a triangulation of the United States Geological Survey, and is definitely located on their maps; that would not cover the area; it is off to the east of here.

Q. That is off to the east of Exhibit 2?

A. Of Exhibit 2. At this time I could not accurately locate that. The plane-table sheet, the orig-

(Deposition of E. C. Barnard.)

inal record of this survey, is on file at the Geological Survey Office in Washington, and can be obtained there, and that would show the location of Satas Peak. It is off to the eastward of the Mount Adams Quadrangle, and my recollection is to the southeast of Fort Simcoe. The Geological Survey could furnish you a geodetic survey of the peak.

Q. You say your recollection is it is south and east of Fort Simcoe?

A. South and east of Fort Simcoe; I think right down in here (indicating).

Q. Indicate, if you can, about where you think it is; I don't want you to indicate exactly, but your best judgment.

A. My best judgment is it is right in there. Shall I put my initials?

Q. Yes.

A. (Witness marks his initials, "E. C. B." on map, Exhibit 1.)

Q. Designate what you mean by the hunting excursions?

A. The hunting excursions of the Indians were in the upper portion of the Klickitat valley, and in the vicinity of Goat Rocks, on the summit of the Cascade Mountains, and which I mark in pencil on the map with my initials, "E. C. B.," Exhibit 1. (The witness marks the same.)

Mr. CANNON.—That is all.

Redirect Examination.

(By Mr. AVERY.)

Q. Mr. Barnard, looking at Exhibit 1, what is the

(Deposition of E. C. Barnard.)

topography of the country between mile-post 29, as indicated on that map, and Grayback Peak, where you have double lines jotted down?

A. Starting from Grayback Peak, it is a well-defined sharp right, which becomes less distinguishable as you approach mile-post 29, less prominent.

Q. Were there blazes along there, that line that I have spoken of?

A. My recollection is that there were no blazes found. I would not be certain on that.

Q. The blazes were between mile-post 29 and mile-post 51?

A. Yes, between mile-post 29 on the Military Road and mile-post 51 on the survey of 1890.

Q. Now, while I suppose that generally all of us know what blazes are, the blazes you have spoken of are blazes in trees?

A. Yes, where the bark as well as a portion of the wood fiber of the tree has been cut away.

Q. That is the usual way of indicating boundaries, is it not?

A. That is the usual way.

Q. And the blazes you have spoken of, are they in trees, all of them?

A. In trees.

Q. I was going to ask you one more thing that has occurred to me. I call your attention to Exhibit 1 at that point, southeast of your boundary, and designated "Junction of trial and Goldendale Road," and ask you to state where that point is on this topographical map, Exhibit 2, approximately.

A. Approximately at the point marked with an "X" with a "D" below it.

(Deposition of E. C. Barnard.)

Q. That you have just made?

A. Just made.

Q. Now, calling your attention to Exhibit 1, I will ask you where the main ridge of the Cascade Mountains runs?

A. The main ridge of the Cascade Mountains I will indicate on the map with a red ink line. It extends from Goat Rocks to the summit of Mount Adams.

Q. Do you mean straight, or on the white line as indicated on your map irregularly between those points?

A. I mean as indicated on the map by the broken, serpentine line passing through Walp.

Q. From Goat Rocks to the summit of Mount Adams?

A. From Goat Rocks to the summit of Mount Adams.

Mr. CANNON.—And marked also "Summit of the Cascade Mountains"?

A. Yes, and marked also "Summit of the Cascade Mountains."

Mr. CANNON.—I will admit that, is a correct copy of the Barnard map, Exhibit 1.

Mr. AVERY.—And is on file in the Department files?

Mr. CANNON.—Yes.

Mr. AVERY.—That is all.

Recross-examination.

(By Mr. CANNON.)

Q. Give the direction of the ridge referred to in

(Deposition of E. C. Barnard.)

your first answer to counsel's first redirect question?

A. Well, the general direction east and west, that is, the ridge, as I understand—the ridge extending between mile-post 29 and Grayback Peak.

Q. The direction of the ridge is east and west?

A. Generally; yes.

Re-redirect Examination.

(By Mr. AVERY.)

Q. Will you state, Mr. Barnard, the distance approximately between mile-post 29 and mile-post 51?

A. There should be a scale on this map somewhere; scale one inch equals four miles. So that distance is approximately two miles; that is about half an inch.

Q. Calling your attention to your map, Complainant's Exhibit 1, I will ask you if the names of the rivers, points, mountains, creeks, streams, roads, trails and like points, as indicated on this map, represent their positions as indicated on the ground, on the land covered by the map?

A. They do.

Mr. AVERY.—That is all.

EDWARD C. BARNARD.

Subscribed and sworn to before me, this 2d day of July, A. D. 1908.

SANFORD C. HINSDALE,

U. S. Commissioner,

Denver Colo.

**[Commissioner's Certificate to Deposition of E. C.
Barnard, etc.]**

United States of America,
District of Colorado,—ss.

I, the undersigned, United States Commissioner, in and for the District of Colorado, duly appointed, qualified and authorized to administer oaths, and to take and certify depositions, do hereby certify that, at my office, in Room 808, Continental Building, on the southwest corner of Sixteenth and Lawrence Streets, in the city of Denver, State of Colorado, on the 25th day of June, A. D. 1908, commencing at the hour of 10 o'clock A. M. on said day, and on the 26th and 27th days of June, A. D. 1908, as indicated at the commencement of the foregoing deposition, under and pursuant to the written notice attached to the foregoing deposition, issued and served in the above-entitled civil cause, I proceeded to take the deposition of said E. C. Barnard, who was of sound mind and lawful age, and who lives and resides in the city of Denver, State of Colorado, and more than one hundred miles from the place of trial of the above-entitled cause, and more than one hundred miles from any place at which a Circuit Court of the United States for the Eastern District of Washington, Southern Division, is appointed to be held, to be used in the trial of the above-entitled cause, to wit, United States of America, complainant, versus Northern Pacific Railway Company, a corporation, The Mercantile Trust Company, a corporation,

Henry Yeackel and Flora Yeackel, his wife, Wilbur S. Badley and Florence C. Badley, his wife, C. D. Wise and ——— Wise, his wife, R. D. McCully, Henry Garner and ——— Garner, his wife, defendants, now pending in said Circuit Court of the United States in and for the Eastern District of Washington, Southern Division; that immediately before the taking of said deposition said witness was cautioned and sworn by me to testify the truth, the whole truth and nothing but the truth; that he thereupon testified as is above shown, and in the taking of said deposition said witness was carefully examined, his testimony taken down and reduced to typewriting by Frank M. Harker, a competent person, under my personal supervision, and then read over and subscribed by the witness in my presence; that the complainant in said cause was represented in the taking of said deposition by A. G. Avery, Esq., United States Attorney for the Eastern District of Washington, and the defendants were represented by Edward J. Cannon, Esq., an attorney at law, their solicitor, on the 27th day of June, 1908, as is shown at the commencement of the aforesaid deposition; that said deposition was all taken on said 25th, 26th and 27th days of June, 1908, at the place aforesaid; that I am not of counsel or attorney to or for any of the parties to said cause, nor interested in any manner whatever in, or in the result of, said cause; that it is impracticable, by reason of the great distance from my home and office to the above-named court, to deliver said deposition with my own hands into the court for which it was taken, and I have retained said

deposition and shall transmit the same, with the exhibits thereto attached, speedily and safely to the said Circuit Court of the Eastern Division of Washington, Southern Division, in which said cause is pending, by United States Mail, first sealing the same up securely in an envelope, and directing the same by my own hand to said court, at the city of Spokane, State of Washington, to there remain under my seal until opened in court as provided by law; that I have marked the exhibits referred to or offered in connection with said deposition in accordance with the identification marks used in identifying said exhibits therein, respectively, and have attached said exhibits so marked to said deposition as a part thereof.

Witness my hand and seal, at Denver, Colorado, on this second day of July, A. D. 1908.

SANFORD C. HINSDALE,

United States Commissioner of Colorado.

[Seal of said Commissioner]

Complainant's Commissioner's Costs.....	\$14.50
Defendants' " " " " " " " " " " " "	6.00

\$20.50

SANFORD C. HINSDALE,

U. S. Comr.

Defendants' costs paid.

S. C. HINSDALE,

U. S. Comr.

[Endorsement]: Filed in the U. S. Circuit Court, Eastern Dist. of Washington. Sep. 19, 1908. Frank C. Nash, Clerk.

**[Plaintiff's Exhibit No. 3, Attached to Deposition of
E. C. Barnard.]**

56th CONGRESS,
1st Session.

DOCUMENT
No. 621.

**HOUSE OF REPRESENTATIVES.
YAKIMA INDIAN RESERVATION.**

LETTER

from

THE SECRETARY OF THE INTERIOR,
transmitting.

**WITH THE DRAFT OF A BILL, COPY OF A
COMMUNICATION FROM THE COMMISSIONER OF INDIAN AFFAIRS RELATIVE TO THE BOUNDARY OF YAKIMA INDIAN RESERVATION.**

April 21, 1900.--Referred to the Committee on Indian Affairs and ordered to be printed.

[Endorsed]: Exhibit No. 3. Compl't's Proofs. S. C. Hinsdale, Examiner. Attached to Barnard, Dep.

Department of the Interior,

Washington, April 20, 1900.

Sir: I have the honor to transmit herewith a copy of a communication of the 16th instant from the Commissioner of Indian Affairs, and accompanying papers, relative to the examination by Mr. E. C. Barnard, of the Geological Survey, of the disputed western boundary line of the Yakima Indian Reservation, in the State of Washington.

I also transmit a draft of a bill prepared by my direction granting authority for the detail by the Secretary of the Interior of an Indian inspector to negotiate an agreement with the Yakima Indians for the adjustment of their claim for the lands embraced in the tract claimed by them, containing 293,837 acres, as shown by Mr. Barnard's report.

This matter is respectfully submitted with recommendation for favorable consideration.

Very respectfully,
E. A. HITCHCOCK,
Secretary.

The Speaker of the House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, April 16, 1900.

Sir: The office is in receipt of your letter dated the 7th instant, in reply to office report dated the 6th instant, relative to the examination by Mr. E. C. Barnard, of the Geological Survey, of the disputed western boundary line of the Yakima Indian Reservation, in Washington. In said office report the opinion was expressed that it was now sufficiently clear that the Yakima Indians had been deprived of at least the tract of land adjoining their reservation on the west, estimated to contain about 293,837 acres, and it was recommended that the findings of Mr. Barnard, at least to that extent, be approved.

In accordance with the said office recommendation, you now approve said findings and direct the office to prepare a draft of an item granting authority for the detail by the Secretary of the Interior

of an Indian inspector to negotiate an agreement with the Yakima Indians for the adjustment of their aforesaid claim, any adjustment thereof to be final and to cover all claims the Indians may have on account of the disputed western boundary of their reservation.

In compliance with your instructions, the office has prepared and incloses herewith, in duplicate, a draft of a bill providing for the detail of a United States Indian inspector to negotiate an agreement with the Yakima Indians for the adjustment of their claim to a certain tract of land adjoining their present reservation on the west, containing, by estimate, 293,837 acres, and it is respectfully recommended that said draft of bill be transmitted to the Senate and House of Representatives, respectively, with the request that the proposed legislation be enacted. In order that Congress may be fully informed in reference to the said disputed western boundary, there are inclosed herewith copies in duplicate of office report dated April 12, 1898; of Mr. E. C. Barnard's report dated January 12, 1900; of Mr. R. U. Good's letter of January 16, 1900; of letter dated January 16, 1900, from Director Charles D. Walcott, of the Geological Survey; of office report dated April 6, 1900, and blue print copies of two maps accompanying Mr. Barnard's report.

Mr. Barnard inclosed with his report seven photographs showing portions of the area in dispute, and also some of the principal geographical points. The office has no facilities for making copies of such

photographs, so that no copies are transmitted herewith.

I also inclose herewith two copies of this report.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

The Secretary of the Interior.

Department of the Interior,

Office of Indian Affairs,

Washington, D. C., April 6, 1900.

Sir: The office hereby acknowledges the receipt, by reference of the Acting Secretary of the Interior on January 17, 1900, for consideration, report, and recommendation, of letter from the Director of the Geological Survey dated January 16, 1900, inclosing Mr. E. C. Barnard's report, dated the 12th of that month, of his examination of the disputed western boundary line of the Yakima Indian Reservation, in Washington, which was begun in the fall of 1898, in compliance with Departmental instructions dated September 24, 1898, and not having been completed, was renewed September 15, last, and completed October 15, under further instructions of the Department dated August 23, 1899:

The acting Secretary in his indorsement invites attention to office report of April 12, 1898, on the subject.

Mr. Barnard first gives an account of his trip over the present western boundary and over the country in dispute, and describes the physical and topographical features bearing upon the subject. This portion of his report it is not deemed necessary to review

here. After quoting article 2 of the treaty with the Yakima Indians, concluded June 9, 1855 (12 Stats., 951), describing the reservation boundary, Mr. Barnard then gives his conclusions upon the matter at issue. The essential points are quite concisely stated by him and are quoted for convenient reference. He says:

The important cause of this treaty is that the summit of the Cascade Mountains should form a part of the Western boundary.

Certainly the existing boundary line does not reach the summit of the Cascade Mountains at any point, and I cannot believe that the ridge along which the present boundary line runs was considered the summit at the time the treaty was made, as even then the Indians were in the habit of hunting and gathering berries on what is now well understood to be the summit of the Cascade Mountains.

As evidence that it was the main summit of the Cascade Mountains spoken of in the treaty of 1855, I would refer to the accompanying map which is a tracing of the White Swan map now on file at the Yakima Indian Agency, the said White Swan map being a tracing of a part of a map made by the direction of Governor Stevens in 1857 to show the Indian reservations in Washington Territory at that time.

This map certainly shows that what is now considered the main summit of the Cascade Mountains was a portion of the western boundary line of the Yakima Indian Reservation.

Standing on Signal Peak and reading over the treaty, or with the map before us, there is no possible

way of making the wording of the treaty agree with the topography of the country. With the evidence, however, collected in the field, corroborating the testimony of Stick Joe and Chief Spencer, who were shown part of the boundary lines by authorized Government agents, I believe it is possible to determine quite accurately what the intention of the treaty was and where the boundary line of the reservation should be.

From the imperfect topographic knowledge of the country it was believed that both the Atanum and Pisco rivers reached to the summit of the Cascade Mountains, but such is not the case although from a distance it would be a fair presumption.

Now, in regard to what the Indians expected, they had for several years previous to the treaty been in the habit of hunting in the valley of the Klickitat and in the vicinity of Goat Rocks, which are prominent points 8,200 feet high and a good landmark and where mountain goats were numerous; also of making annual excursions to the vicinity of Walp to gather berries—and a berry patch is considered a very valuable possession by the Indians. The Indians would therefore naturally desire to have these localities included in their reservation.

From the head of the south fork of the Atanum River, as it does not reach the summit of the Cascades by some 20 miles the boundary line should then follow the divide around the head waters of the Klickitat River, passing over Spencers Point to Goat Rocks, which is on the main summit of the Cascade Mountains; from Goat Rocks it should fol-

low the main summit to Mount Adams. This ridge is well defined from a considerable distance toward Mount Adams, when it becomes lower and flattens out and the line might swing around the eastern slope to reach the conical hump described by Stick Joe, which is a well-defined point, easily recognized, 7,500 feet high or it might reach the conical hump by passing over the summit of Mount Adams. The boundary line would then continue in a straight line to Grayback Peak. The blazed trees at the junction of the Indian trail with the Goldendale road falls south of this line about 2 miles, but this is not surprising, as it would be impossible to locate such a point accurately without a survey, such a survey never having been made. In my opinion the blazes found at this point established the presumption that a straight line from Grayback Peak to the hump on Mount Adams was a portion of the southern boundary of the reserve.

From Grayback Peak the line extends to the east along a well-defined ridge to mile-post 51 of existing boundary. The forked tree and line of blazes extending up the ridge from mile-post 29 on the old military road appear to me ample evidence that this ridge was part of the intended boundary, although the true ridge that the line must follow is a little to the south of mile-post 29.

Granted that the line started from mile-post 51 of the existing boundary down the ridge toward Grayback, and certainly the testimony of Chief Spencer and Stick Joe is strong evidence, and when strengthened by the evidence found in the field, I

believe incontestible, the boundary line, as indicated in green on the accompanying map, is the only logical one.

There is other evidence that up to the time that the existing boundary line was surveyed in 1890 the ridge extending from mile-post 51 to Grayback Peak was considered the southern boundary of the reserve, as prior to that date, when Father Wilber was agent, the Indians received rent for grazing lands in Cedar Valley from white settlers in the vicinity.

In conclusion Mr. Barnard states that, in his opinion, by accepting the existing boundary the Indians have been deprived of 357,878 acres that according to the terms of the treaty of 1855 were to have been set aside for their use, and that they should have either the land restored to them or be compensated therefor.

Mr. Barnard's report is addressed to the geographer of the Geological Survey, Mr. R. U. Goode, who submitted it to the director with letter of January 16, 1900, concurring in the conclusions reached.

Accompanying the report of Mr. Barnard, are two maps, one of them being a reconnoissance map prepared by himself, showing the reservation, the area in dispute, the boundary claimed by the Indians, the boundary corresponding to the wording of the treaty, and various points bearing on the subject; the other map is a tracing of a portion of an old map on file in this office, prepared by Governor Isaac I. Stevens in 1857. Seven photographs also accompany the report.

From Mr. Barnard's map and report it will be

observed that the boundary claimed by the Indians does not extend as far west as he believes it should according to the wording of the treaty, viz., to the main ridge of the Cascade Mountains; and that the area of the tract claimed by the Indians outside their reservation as now surveyed is 293,837 acres, while Mr. Barnard believes they are entitled to 64,041 acres more, or 357,878 acres.

The conclusions of Mr. Barnard only confirm the views and suggestions of the office, as set forth in its report of April 12, 1898, upon the main points, viz., (1) that the wording of the treaty cannot be made to conform to the topography of the country; (2) that the present boundary does not reach at any point the main ridge of the Cascade Mountains, although the treaty specifically provides that it shall extend that far west, and the map of Governor Stevens, who also made the treaty with the Indians, tends to confirm this; and (3) that there is good ground for the contention of the Indians that a portion of the tract intended to be reserved for them by the treaty has been excluded on the west by the survey of 1890.

The investigation of Mr. Barnard also confirms the opinion then expressed by the office that it found no warrant for the suggestion of Inspector McConnell and others that the names of the rivers had been changed in order more readily to change the reservation lines.

The difficulty in the language of the treaty doubtless comes about, as suggested by Mr. Barnard through the imperfect topographic knowledge of the

country had at that time. The Klickitat River which flows south into Columbia, intervenes between the present reservation and the main ridge of the Cascade Mountains, whereas Mr. Barnard says it was believed and from a distance it would be a fair presumption, that both the Atanum and Bisco Rivers, flowing east into the Yakima River, reached the summit of said mountains. This, however, is not the case.

The office believes it is now sufficiently clear that the Yakima Indians have been deprived of a portion of the land intended to be reserved for them by treaty, and that proper measures should be adopted to secure their rights thereunder. It is therefore recommended that the findings of Mr. Barnard be approved, at least to the extent of the tract claimed by the Indians, 293,837 acres, and that appropriate action be initiated to secure reimbursement to the Indians for the lands of which they claim to have been deprived. It is believed to be now impracticable to extend the reservation boundary so as to embrace the lands cut off by the survey of 1890.

In this connection attention is respectfully invited to office report of February 2, 1899, in which it was suggested that the Crow, Flathead, etc., commission be instructed to inquire into the aforesaid boundary matter, and, if found justly entitled, to make provision to the agreement, if any, negotiated with said Indians for lands of which they have been deprived. It will be recalled that according to the reports of said commission, made from time to time, one of the principal obstacles in the way of securing an agree-

ment with the Yakimas was that relating to the adjustment of this boundary dispute.

The Crow, Flathead etc., commission was terminated by law on the 1st instant. (See act approved March 3, 1899, 30 Stats., 1235.)

There is therefore no present authority of law for negotiations with the Yakima Nation of Indians for the cession of a portion of their surplus lands, and it might be remarked here that the office is not aware that the said Indians have ever requested or expressed a desire for negotiations to that end.

Should it be deemed desirable to ask Congress for authority to conduct such negotiations, preferably through an Indian inspector, it is thought that an item should be added providing for the adjustment of this claim of the Indians for the lands which have been cut off the western portion of their reserve. If it is not deemed best to negotiate at this time with said Indians for the cession of lands, then it is believed an item should be prepared and submitted to Congress granting authority for the detail of an Indian inspector to negotiate an agreement with them for the adjustment of this claim alone.

Should you concur in the above views and recommendations the office will upon receipt of instructions, prepare an item covering either the claim alone or both the claim and negotiations for the cession of lands, as you may direct.

The report and papers accompanying Director Walcott's letter are returned herewith, with request

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that the same be returned to this office for file with your reply.

Very respectfully, your obedient servant,

W. A. JONES,
Commissioner.

The Secretary of the Interior.

Department of the Interior,
United States Geological Survey,
Washington, D. C., January 16, 1900.

Sir: I have the honor to transmit herewith, as requested in letter of the Department dated September 24, 1898, a report on the boundary lines of the Yakima Indian Reservation. The necessary surveys have been made, as described in the letter of Mr. E. C. Barnard, topographer, and Mr. R. U. Goode, geographer. Two maps and seven photographs accompany the report.

Yours with respect,

CHAS. D. WALCOTT,
Director.

The Secretary of the Interior.

Department of the Interior,
United States Geological Survey,
Washington, D. C., January 16, 1900.

Sir: I have the honor to transmit herewith a report by Mr. E. C. Barnard, topographer, relating to the boundary lines of the Yakima Indian Reservation, and also two maps and seven photographs.

Mr. Barnard was detailed originally for this work on October 10, 1898, under instructions from the Honorable the Secretary of the Interior, dated September 24, 1898, but was prevented from complete-

ing the survey on account of adverse weather conditions.

Under departmental instructions dated August 23, 1899, Mr. Barnard was directed to resume operations, and was engaged from September 15 to October 15, during which time the surveys were completed.

The principal conclusions reached by Mr. Barnard are, first, that the existing boundary as surveyed does not conform either to the wording or the intention of the treaty under which the lands were reserved for the use and occupation of the Yakima Indians; and second that the area to which the Yakima Indians are entitled in excess of that now included within the existing boundaries amounts to 357,878 acres of about 559 square miles.

I concur in the above conclusions.

The Director United States Geological Survey.

Very respectfully,

R. U. GOODE,
Geographer.

Department of the Interior,
United States Geological Survey,
Washington, D. C., January 12, 1900.

Sir: In accordance with your letter of instructions to continue the examination of the disputed boundary line of the Yakima Indian, the examination having been suspended the previous season on account of snow in the mountains, and to definitely determine the area in dispute I have the honor to submit the following report and accompanying maps.

On September 16 the party was organized in North Yakima, consisting of Wilkins Manning, assistant; John Dwyer, packer, and William Miller, cook. The party then moved to Fort Sincoe, where Mr. Lynch the agent of the Yakima Indian Reservation has secured riding animals for the trip, and who also did all in his power to assist us in outfitting. There we are joined by Abe Lincoln, a Yakima Indian who had acted as my guide in the investigations made in October, 1898, and who was well acquainted with the county and with the claims of the Indians.

Fortunately the United States Geological Survey had extended triangulation to cover the area to be examined, thus furnishing me with the geodetic positions of Satas Peak, Signal Peak, and Mount Adams.

After occupying Satas Peak we started with pack train, going first to Signal Peak, from which point a good view of the area in dispute can be obtained.

From this point we proceeded north along the present boundary line, which follows a flat ridge with numerous spurs to Pisco Meadows, locating points on the present boundary and sighting points on the main submit of the Cascades.

From Pisco Meadows the northwest corner of the reserve which is in a comparatively low gap in the divide, was visited and located. From this point the ridge continues around the head waters of the Klickitat to Goat Rocks and becomes higher and well defined. From a point on the ridge just beyond the northwest corner of the present boundary line a

very good view is obtained of the entire head waters of the Klickitat and the summit of the Cascades.

Standing at this point and looking west, Abe Lincoln called my attention to the description of the boundary line given me by Chief Spencer a year ago, in which he said the line extended westward from the head of the South Fork of Atanum River to a sharp point east of Goat Rocks, which point was now plainly visible and a well marked feature in the landscape.

From this point Spencer further stated that the boundary line extended to a conical hump on the southeast slope of Mount Adams, which hump is well defined and was also plainly visible. From where we stood it did appear that the divide continues from Spencer point southward to Mount Adams but more extended investigations proved this erroneous.

From Pisco Meadows we descended into the valley of the Klickitat and ascended the right hand fork, visiting and locating Spencers Point, and then pushed on to the summit of the Cascades, about 10 miles south of Goat Rocks, camping near the Old Berry Patch, which is on the east slope of a mountain known by the Indians as Walp, which point was visited and located.

It had been my intention to follow the main summit of the Cascades from this point to Mount Adams, but a severe snow storm coming up we were forced to return to the Klickitat Valley, and as the storm continued for several days it was impossible to proceed that way on account of the deep snow.

We now descended the valley of the Klickitat, passing the place where the Indians camped for years on their hunting excursions and near which is an old cranberry marsh, from which they obtained berries. Continuing down the valley on the west side of the Klickitat we finally came to the point where the old Indian trail from Fort Simcoe joins the Goldendale road. This was the place Chief Spencer told me, that the agents of the Government had blazed trees to mark the boundary line of the reserve in 1858 or 1859. On search two large bull pines were found that showed indications of old blazes and upon cutting one out and counting the rings it was found that the blaze had been made forty years ago, which would substantiate Spencer's story. This blaze is now at the agency at Fort Simcoe.

From here we crossed the Klickitat River by the bridge and proceeded to Grayback Peak. No traces of any post could be found, but Stick Joe's description, given in report of last year, of the point was good. From this point the conical hump on the southeast slope of Mount Adams was plainly visible.

After locating Grayback Peak we journeyed to the eastward, soon coming to the old military road, which we followed to mile-post 29, which is claimed by the Indians as marking a point on the true boundary line of the reserve. Within 100 feet of this point is a forked pine tree of rather unusual shape which I had before heard of as claimed by the Indians to mark the boundary line.

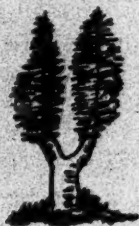
On a large tree was a blaze, and from this tree,

running to the east up the ridge toward mile-post 51 of the present boundary, was a line of blazes about forty years old, which I believe to be the line blazed by the party of Government agents that Stick Joe accompanied in 1860. From here we proceeded to mile-post 51, which we located, and after locating some other points on the present boundary line, returned to Fort Simcoe on October 12.

On this trip the present western boundary line of the reserve was followed for nearly its full length, Spencers Point, Goat Rocks, the summit of the Cascades from Goat Rocks to Mount Adams, the hump on the Southeast slope of Mount Adams, Grayback Peak, and the ridge leading from Grayback to mile-post 51 were accurately located and a reconnaissance map of the area in dispute made. The accompanying map shows the result of the work.

The testimony of the Indians Chief Spencer and Stick Joe given in the report of last year, is repeated below.

"Stick Joe said that in or about 1860 he accompanied a party along a portion of the Southern boundary line. They left the old military road at mile-post 29, this being the point where the reservation line crosses the same. They then proceeded on the line which follows a well-defined ridge to a peak called Grayback, on the summit of which a marked wooden post set in the ground was found. At this point the surveyor, agent, or officer accompanying the party took out a telescope or some surveying instrument, and sighting toward Mount Adams,



pointed out a conical hump on the southeast slope of the same, told the party that the line now went straight to that point. The party tried to proceed in that direction, but on account of the precipitous nature of the mountain side had to turn back and go around the ridge. This appears to have been as far as the party went at this time. Stick Joe said that the wooden post seen on Grayback has since disappeared."

The above description of the route followed was given in a graphical way, with gestures that leads me to believe it was an actual experience.

Chief Spencer, on being asked to tell what he knew of the boundary line of the reserve said that Governor Geary, who succeeded Governor Stevens, described the limits of the reserve to him as follows:

"Up the Atanum River from its mouth to the mouth of the South Fork; thence up the South Fork to the head; thence directly west across the Little Klickitat to a high point just this side of Goat

Rocks; thence to a conical hump on the southeast slope of Mount Adams.

"Chief Spencer, Mr. Thompson, Dr. Nowdsen, Indian agent at the time, and a clerk from the Warm Spring Agency at one time went over a portion of the Southern boundary. They blazed some trees at the junction of the wagon road from Goldendale with the trail from Yakima, this point being supposed to be on the line from Grayback Peak to the hump described on the southeast slope of Mount Adams."

In an interview with Stick Joe and Chief Spencer this fall they told practically the same stories as last year, Chief Spencer using the name Townsend for Thompson, and on looking the matter up I find that Townsend was agent at the White Salmon Agency in 1858. He also mentioned Mr. Mason's name in connection with this trip and I find Mason was secretary to Governor Stevens and acting Governor of Washington Territory from August 11, to September, 1859.

The treaty of 1855, ratified in 1859, describes the boundary line of the Yakima Indian Reservation as follows:

"Article 2. There is, however, reserved from the lands above ceded for the use and occupation of the aforesaid confederate tribes and bands of Indians, the tract of land included within the following boundaries, to wit: Commencing on the Yakima River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of

said mountains, passing south and east of Mount Adams to the spur whence flows the waters of the Klickitat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakima, 8 miles below the mouth of the Satass River; and thence up the Yakima River to the place of beginning.

"All which tract shall be set apart, and so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes and bands of Indians as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove and settle upon the same within one year after ratification of the treaty. In the meantime it shall be lawful for them to reside upon any ground not in actual claim and occupation."

The important clause of this treaty is that the summit of the Cascade Mountains should form a part of the western boundary.

Certainly the existing boundary line does not reach the summit of the Cascade Mountains at any point, and I cannot believe that the ridge along which the present boundary line runs was considered the summit at the time the treaty was made, as even then the Indians were in the habit of hunting and gather-

ing berries on what is now well understood to be the summit of the Cascade Mountains.

As evidence that it was the main summit of the Cascade Mountains spoken of in the treaty of 1855, I would refer to the accompanying map, which is a tracing of the White Swan map now on file at the Yakima Indian Agency, the said White Swan map being a tracing of a part of a map made by the direction of Governor Stevens in 1857, to show the Indian reservations in Washington Territory at that time.

This map certainly shows that what is now considered the main summit of the Cascade Mountains was a portion of the western boundary line of the Yakima Indian Reservation.

Standing on Signal Peak and reading over the treaty or with the map before us, there is no possible way of making the wording of the treaty agree with the topography of the country. With the evidence, however, collected in the field corroborating the testimony of Stick Joe and Chief Spencer, who were shown part of the boundary lines by authorized Government agents, I believe it is possible to determine quite accurately what the intention of the treaty was and where the boundary line of the reservation should be.

From the imperfect topographic knowledge of the country it was believed that both the Atanum and Pisco rivers reached to the summit of the Cascade Mountains, but such is not the case, although from a distance it would be a fair presumption.

Now, in regard to what the Indians expected, they had for several years previous to the treaty been in

the habit of hunting in the valley of the Klickitat and in the vicinity of Goat Rocks, which are prominent points, 8,200 feet high, and a good landmark, and where mountain goats were numerous; also of making annual excursions to the vicinity of Walp to gather berries, and a berry patch is considered a very valuable possession by the Indians. The Indians would, therefore, naturally desire to have these localities included in their reservation.

From the head of the South Fork of the Atnum River, as it does not reach the summit for the Cascade by some 20 miles, the boundary line should then follow the divide around the head waters of the Klickitat River, passing over Spencer's Point, to Goat Rocks, which is on the main summit of the Cascade Mountains; from the Goat Rocks it would follow the main summit to Mount Adams. This ridge is well defined for a considerable distance toward Mount Adams, when it becomes lower and flattens out and the line might swing around the eastern slope to reach the conical hump described by Stick Joe, which is a well-defined point easily recognized, 7,500 feet high, or it might reach the conical hump by passing over the summit of Mount Adams. The boundary line would then continue in a straight line to Grayback Peak. The blazed trees at the junction of the Indians trail with the Goldendale road falls south of this line about 2 miles, but this is not surprising, as it would be impossible to locate such a point accurately without a survey, such a survey never having been made. In my opinion, the blazes found at this point established the presumption that

a straight line from Grayback Peak to the hump on Mount Adams was a portion of the southern boundary of the reserve.

From Grayback Peak the line extends to the east along a well-defined ridge to mile-post 51 of the existing boundary. The forked tree and line of blazes extending up the ridge from mile-post 29 on the old military road appear to me ample evidence that this ridge was part of the intended boundary, although the true ridge that the line must follow is a little to the south of mile-post 29.

Granted that the line started from mile-post 51 of the existing boundary down the ridge toward Grayback, and certainly the testimony of Chief Spencer and Stick Joe is strong evidence and when strengthened by the evidence found in the field I believe incontestible, the boundary line as indicated in green on the accompanying map is the only logical one.

There is other evidence that up to the time that the existing boundary line was surveyed in 1890, the ridge extending from mile-post 51 to Grayback Peak was considered the southern boundary of the reserve, as prior to that date, when Father Wilbur was agent, the Indians received rent for grazing lands in Cedar Valley from white settlers in the vicinity.

Should the existing boundary line be changed, I would respectfully recommend that from the conical hump on the east slope of Mount Adams, it extend westward to the summit of the mountain and then north, which would define it accurately. I have indicated this proposed line in brown.

In conclusion, I wish to state that in my opinion,

by accepting the existing boundary, the Indians have been deprived of 357,878 acres that according to the terms of the treaty of 1855, ratified in 1859, was to have been set aside for their use and they should have either the lands restored to them or be compensated for the same.

All of which is respectfully submitted.

E. C. BARNARD, Topographer.

Mr. R. U. GOODE,

Geographer, United States Geological Survey.

Department of the Interior,

Washington, April 7, 1900.

Sir: I have considered your communication of the 6th instant on the letter of the Director of the Geological Survey, and accompanying report of Mr. E. C. Barnard of his examination of the disputed western boundary line of the Yakima Reservation in Washington.

Mr. Barnard shows that the area of the tract claimed by the Indians outside of their reservation as now surveyed, is 293,837, and that he believes they are entitled to 64,041 acres more, or 357,878 acres.

You recommend, believing it now sufficiently clear that the Yakima Indians have been deprived of a portion of the land intended to be reserved for them by treaty and that proper measures should be adopted to secure their rights thereunder, that the findings of Mr. Barnard be approved to the extent of the tract claimed by the Indians—293,837 acres—and that appropriate action be initiated to secure reimbursement to the Indians for the lands of which they claim to

have been deprived.

In accordance with your recommendation, Mr. Barnard's findings as to the extent of the tract claimed by the Indians—293,837 acres—is approved and you will please prepare a draft of an item to Congress granting authority for the detail, by the Secretary of the Interior, of an Indian inspector to negotiate an agreement with the said Yakima Indians, providing for an adjustment of this claim for the lands embraced in the tract claimed by them, containing 293,837 acres, any adjustment thereof to be final and to cover all claims the Indians may have on account of the disputed western boundary of the said reservation. The inclosures to your letter are herewith returned.

Very respectfully,

E. A. HITCHCOCK,

Secretary.

The Commissioner of Indian Affairs.

Department of the Interior,

Office of Indian Affairs.

Washington, April 12, 1898.

Sir: Referring to office report of March 11, 1898, upon the communication of Inspector J. W. McConnell, dated September 21, 1897, relative to the wrongs done to the Indians of the Yakima Reservation, Wash., in connection with the Wenatshapam fishery agreement and in the survey of the western boundary of the reservation, whereby it is alleged the Indians are deprived of lands intended to be included in the reservation by the terms of the agreement of 1855, I have the honor of state that under date of

March 5, 1898, the office called upon Agent Jay Lynch, of the Yakima Agency, to procure and forward an old map of the reservation referred to by Inspector McConnell in the possession of an Indian named White Swan, to whom, it is alleged, it was given by Governor Isaac I. Stevens, who marked off said reservation for the Indians.

I am now in receipt of a letter dated March 14, 1898, from Agent Lynch inclosing the map referred to, which, he says, was turned over to him by the United States Agent Stabler as part of the records of the Yakima Agency during his (Lynch's) first term as agent in 1891, and has been a part of the records of that office ever since. The agent says he is unable to tell by whom or where the map was made, but that he has always been under the impression that it was prepared under the direction of Governor Stevens and was an official map of the reservation, showing just what it was intended to show.

Since receiving said map the office has been investigating the matter of said reservation boundary as thoroughly as is possible at this time with the materials, data, and maps that could be procured.

It will be observed that Inspector McConnell says in his report of September 21 last, which was returned with office letter of March 11, 1898, above referred to, that the complaints of the Indians in the matter of their reservation boundary are well grounded, as evidenced by the original map of the reservation made by Governor Stevens, who also made the treaty; that a comparison of said map with those of the present time shows an entirely different

boundary; that the names of the streams even have been changed, probably with the purpose of more readily changing the lines; that White Swan, an old Indian who was present when the reservation was marked out by Governor Stevens, and agreed to by the Indians, has the original copy of the map referred to in his possession, and that having examined it he has no doubt as to its authenticity.

This is the map above referred to, which the office requested Agent Lynch to forward, and of which I inclose a blue print copy herewith.

Upon investigation it is found that the said White Swan map is a tracing of a portion of a large map prepared in March, 1857, under the direction of Governor Stevens, showing the Indian nations and tribes of the "Territory of Washington and of the Territory of Nebraska west of the mouth of the Yellowstone." The said map, which bears the approval of Governor Stevens, also contains an indorsement by him to the effect that it was forwarded to the Commissioner of Indian Affairs under date of April 30, 1857.

The White Swan map covers only so much of the map referred to as shows the lands reserved for the Yakima Nation of Indians by the treaty of June 8, 1855 (12 Stat., p. 951), including the Wenatshapam Fishery. Said reservation is clearly laid down and indicated on the large map of Governor Stevens, so that the authenticity of the tracing referred to is sufficiently established though it is unknown whether the same was actually given to the Indians by Governor Stevens or was prepared in this office at some

subsequent time.

An examination of the boundary of the reservation as laid down by Governor Stevens shows that the lines of the western portion do not conform to those of the reservation at the present time as officially surveyed. The second article of said treaty of 1855 described the boundary of the reservation as follows:

Commencing on the Yakima River at the mouth of the Attah nam River; thence westerly along said Attah nam River to the forks; thence along the southern tributary to the Cascades Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams to the spur whence flows the waters of the Klickitat and Pisco rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakima, 8 miles below the mouth of the Satass River, and thence up the Yakima River to the place of beginning.

From the foregoing description it will be observed that the northern boundary of the reservation was to run westward to the main ridge of the Cascade Mountains. The western boundary of the reservation as surveyed does not touch the main ridge of the Cascade Mountains as shown by the topography of the maps of the present time.

A resurvey of the east and south boundaries and survey of the south and west boundaries of the Yakima Reservation was executed by George A.

Schwartz under contract No. 344, dated June 20, 1890. The survey was executed from September 15 to November 9, 1890, and was approved by the surveyor-general for Washington on August 25, 1890. It appears that the Indians had prior to such survey, complained about the southern boundary of their reservation as surveyed. Said surveyor in resurveying the south boundary, according to his field-notes, began at the Yakima River and surveyed westerly. In said field-notes, in his concluding remarks under the head of "General description," Surveyor Schwartz makes the following statements:

Up to fifty-first mile corner there is no disagreement whatever regarding the location of the line that I could learn; the line follows the top of a well-defined ridge acknowledged to be the true divide by both the whites and Indians with whom I conversed.

The line in dispute is from the fifty-first mile onward in a northerly direction. The Indians claim that the line passes along the top of a low ridge of hills, bearing in a southwesterly direction, and terminates at the Big Klickitat River, and that this should be a continuation of their southern boundary. Upon the western end of said ridge there is a round hill called Grayback Mountain.

Thence it is claimed by the Indians the line bears in a northwesterly direction crossing the Klickitat River to the base of Mount Adams.

From a consultation with Mr. Stabler, the United States Indian agent at Fort Simcoe, and from our understanding of the description of this boundary as

given in the treaty of June, 1855 (U. S. Stats., vol. —, p. 961), I adopt this as the intended course and continue the line along top of the divide which bears in a northerly direction between the waters of the Satas and those flowing into the Klickitat River, etc.

At the seventy-seventh mile corner begin to ascend the Simcoe Mountains, whence flows the Piscoe or Topinish River. All the Indians with whom I have talked concerning the boundary said the stream now known as the "Topinish" was in former times called "Piscoe." Said stream flows east into the Satas, which empties into the Yakima River a few miles below its confluence.

Thence I ran in a northerly direction along top of high mountains which is the divide between the Klickitat and the waters flowing into the Yakama River and is not the main range of the Cascade Mountains, which cannot be reached without crossing the Klickitat River.

I followed said divide to a low saddle, where the southern tributary of the Ahtanum heads, and also a tributary of the Klickitat which flows west.

The main Klickitat heads in a northwesterly direction from this point, where the divide connects with the main range of the Cascade Mountains. Said range lies west of a north and south line, that would pass south and east of Mount Adams.

From the seventy-seventh mile corner the line passes along top of the Simcoe Mountains, etc.

From the head waters of the southern tributary of the Ahtanum I ran down the right bank and intersected the corner to fractional sections 6 and 31,

townships 11 and 12 north, range 15 east, Willamette meridian.

The first thing to be noted in connection with the foregoing survey, which covers the southern and western boundaries, is that the course followed in the survey was just the reverse of that followed by Governor Stevens, as shown in the description in the treaty. In the second place, it will be seen that there was no dispute as to the boundary on the part of the Indians until the fifty-first mile was passed. At this point the reservation, as shown by the present survey, makes a sharp turn northward, whereas the Indians think that the line should extend in a westerly or southwesterly direction toward the foot of Mount Adams. The surveyor states distinctly that his survey does not extend to the main ridge of the Cascade Mountains and that it is impossible to reach such main ridge without crossing the Klickitat River.

The description of the boundary of the reservation by Governor Stevens above quoted, is, it seems to me, somewhat indefinite, if not contradictory, as to the western portion thereof, even taking it in connection with the map prepared by himself showing the mountains, rivers, spurs, etc.

It is, however, impossible to determine definitely, without the aid of a carefully prepared topographical map of that portion of country or without a personal examination of the country itself, whether a portion of the original reservation has actually been cut off from the west end by the survey of 1890. I think, nevertheless, the data and facts above set forth are sufficient to establish at least a reasonable ground for

the contention of the Indians.

It has been alleged by various persons who have called the attention of the office to such boundary that the names of the streams have been changed, notably that of the Klickitat, which it is said was called the White Salmon on the Stevens map, and that this has given rise to confusion and has caused the error in question to be made. Upon examining the maps I fail to find any good ground for this contention. If a mistake has been made in the survey it has occurred, it seems to me, by incorrectly determining what is meant by the "forks" of the Atahnum River, mentioned in the treaty. It is alleged by those who claim to be informed that instead of following the first branch which puts into said river from the south the western boundary should follow a branch thereof located some 25 miles farther west.

In conclusion I would say that it is believed enough has been shown to warrant the Department in making an investigation of the boundary dispute referred to, and in this connection it is suggested that this might be best accomplished, and with comparatively little expense either to the United States or to the Indians, through an Indian inspector, who might be authorized, in the prosecution of such investigation, to employ an experienced topographer. In any event, it seems to me that such action should be taken as will obviate the necessity for the employment, at a large fee, of an attorney by the Indians to prosecute their claim for them.

I am fully convinced from the reports and state-

ments made to the office that the Yakima Indians will not rest contented until such boundary matter is satisfactorily settled.

It is suggested that the Crow, Flathead, etc., commission might be instructed to insert in the agreement, if any is negotiated with the Yakima Indians during the present year, a provision to the effect that the United States will make a careful investigation of the disputed boundary matter.

Very respectfully, your obedient servant,

W. A. JONES,
Commissioner.

The Secretary of the Interior.

A Bill to authorize negotiations with the Yakima Indians in the State of Washington for the adjustment of their claim to certain lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized and directed to detail an Indian inspector to negotiate an agreement with the Indians of the Yakima Reservation, in the State of Washington, for the adjustment of their claim to a certain tract of land adjoining their present reservation on the west, containing two hundred and ninety-three thousand eight hundred and thirty-seven acres, more or less, such adjustment to be subject to ratification and acceptance by Congress, and, when so ratified and accepted, to be final and to cover all claims of said Indians on account of the disputed western boundary of their reserve.

C. H. F.

DEPARTMENT OF THE INTERIOR.

Office of Indian Affairs,

Washington, July 8, 1907.

I, C. F. Larrabee, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

(Signed) ' C. F. LARRABEE,
Acting Commissioner.

[Seal of Indian Office]

[Endorsements]: Complainant's Exhibit No. 3. Attached to Barnard Deposition. Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY

(a Corporation), THE MERCANTILE

TRUST COMPANY (a Corporation),

HENRY YEACKEL and FLORA

YEACKEL, His Wife, WILBUR S. BAD-

LEY and FLORENCE C. BADLEY, His

Wife, C. D. WISE and ———, His Wife, R.

D. McCULLY, HENRY HARNER and

——— GARNER, His Wife,

Defendants.

Depositions of Chas. Olney and Chief Spencer.

Pursuant to a stipulation by and between the above-named parties to the above-named cause heretofore filed in said cause, the following named persons were duly sworn and examined before me, Allen S. Davis, as Examiner, in North Yakima, on August 21, 1908, A. G. Avery appearing on behalf of the complainant and Edward J. Cannon appearing on behalf of the defendants, and the following proceedings were had, to wit:

CHAS. OLNEY, called and sworn as interpreter for Chief Spencer on behalf of the complainant.

[Deposition of Chief Spencer, for Complainant.]

CHIEF SPENCER called, sworn, and testifies through said interpreter, as follows on behalf of the complainant:

Direct Examination.

(By Mr. AVERY.)

Q. Ask him what his name is.

A. Spencer (always known as Chief Spencer).

Q. Ask him if he is chief of the Klickitats?

A. Yes, sir.

Q. Ask him if he knows how old he is.

A. That is something I don't keep record of. My parents never kept record of my age.

Q. How long has he been Chief?

A. He was appointed Chief by the father. He was among a lot of boys, and his father appointed him as Chief among the boys.

Q. Where does he live now?

A. On the reservation at Simcoe Valley.

Q. Yakima Reservation? A. Yes.

Q. How old do you think you are?

A. He says he was quite a young man, although he was married. He had a first son living at the time Dr. Whitman was massacred at Walla Walla.

Q. Ask him if he knows where the boundary lines of the Yakima Reservation are as given by the treaty made by Governor Stevens in about 1855?

(To which Mr. Cannon, upon the part of the defendant, objects for the reason that it calls for a conclusion.)

A. He says he wanted to make a statement from

(Deposition of Chief Spencer.)

the beginning and I stopped him and told him to answer the questions.

Q. He can answer this yes or no?

A. Yes; all the Indians know how big our reservation was.

Q. Ask him where the reservation lines are then on the west and south.

A. Well, he says this way. (I have got to explain the best I can.) He says this way: He don't know. He says Governor Stevens himself didn't know how big a country he was going to give, where about the line was going to be. He didn't know at that time, he says.

Q. Well, now, ask him if he was present when the treaty was made.

A. Well, he says this way: At the time that Governor Stevens was holding council with the Indians at Walla Walla about the boundary line he was absent. He was somewhere in Des Moines, further south at that time, and they sent a messenger to him notifying him that Governor Stevens was holding council with the Indians, and he came as far as Vancouver. He didn't went to Walla Walla at that time and he wasn't at the Walla Walla council. When he came to Vancouver, where his native country was, and his people cautioned him not to go to Walla Walla at that council, to remain where his own tribe of people was, so he stayed there.

Q. Well, did he have any council talk with Governor Stevens about the reservation?

A. The same following winter, the middle of win-

(Deposition of Chief Spencer.)

ter, Governor Stevens came to Vancouver himself and saw me there at Vancouver, and the white people introduced him to Governor Stevens at Vancouver. Well, he says Governor Stevens after that shook hands together and invited him to go with him to his home, and so they went to Governor Stevens' home in Olympia. Then Governor Stevens told him at that time he would not have anything to say about the reservation at that time, he just got acquainted that winter, and in the next following spring early Governor Stevens would come back to Vancouver just on purpose to have a talk to the people about the reservation.

Q. Well, did the Governor say at any time that the reservation would be marked out?

A. Yes. He says that Governor Stevens told them people to all move into the reservation here at Yakima reservation, not to stay outside of Yakima reservation after that.

Q. When did he say that the reservation would be marked out, at some council?

A. Governor Stevens recalled the Indians again and told them he was going to have a talk with them about the reservation, and for them to make up their minds for four days, that Governor Stevens gave the Indians four days to make up their minds before they held the council.

Q. Is that the time that he told them the reservation would be staked out, marked?

A. It was later on they told about staking out the reservation corners.

(Deposition of Chief Spencer.)

Q. When was it that he told him that the reservation corners would be staked out, after the treaty?

A. Yes, after the treaty.

Mr. CANNON.—Q. It was after the treaty he told them so? A. Yes.

Mr. AVERY.—How long after?

A. It was the first time they got acquainted, in the winter time, and in the summer time he told them this reservation would have to be staked the following summer.

Q. That was the year after the treaty Governor Stevens told Spencer this about marking the boundary?

A. Yes; told them after they had council about the treaty, told them that their reservation would be staked out.

Q. Was it ever staked out after that?

A. He says that is only one corner they took him to, that is on the Klickitat side, the Klickitat tribe, what he told you about the Junction at Camas Prairie.

Q. Tell him I want him to tell me what he told me again in the room this morning about the southwest corner, that mark there.

A. Them three men came along and they took him to the outlet of Camas Prairie and showed him the southwest corner. That was the corner they made. That is the only corner he knows, and told him from that corner east. Don't know how far, he never was up to what they call the southeast corner, never was to it.

(Deposition of Chief Spencer.)

Q. Well, where is the outlet of Camas Prairie?

A. It was about a day's travel from White Salmon to that outlet of Camas Prairie a horseback.

Mr. CANNON.—Q. White Salmon River?

A. I think from the Lyle. I think that is what it is called now.

Mr. AVERY.—Q. Well, at the place he calls outlet of Camas Prairie was it marked, was there a boundary mark there?

A. He says he don't know where the mark they had, but he knows they cut out a notch on a tree, but didn't know where the—didn't give any marks on it.

Q. Well, he told me this morning about a pile of stone. Ask him where that pile of stone was.

A. He says that pile of rocks belong to that corner. It is kind of a witness mark like.

Q. How did it look? What kind of a pile of rocks was it?

A. In the start when they first made that corner it was only a few big rocks there, piled by those men, and after that whenever I passed up there since that time, if I got a man or two with me, I told him to put them old rocks so and so so it won't fall out.

Q. That is, how far from the junction of the Indian trail on the Goldendale Road is that pile of rocks?

A. He says right on the forks of the road is a blazed tree on one side and rock pile on the other, and the divide of the road is right here between the tree and the rocks.

(Deposition of Chief Spencer.)

Q. That is, at the junction of the Indian trail and the Goldendale road? A. Yes, sir.

Q. Were those three men that he speaks of Government men?

A. Yes, sir, they were Government men. Townsed was a Government man, he knows him. The other two he doesn't know.

Q. Did they come there and point to him where the reservation lines were?

A. Yes, sir. He says it pointed two ways from the corner. He says he point out for him to Mt. Adams, the foot of Mt. Adams, east side of Mt. Adams north, and on the east, southeast, they pointed to Grayback and told him the line would be right on the Grayback from that corner.

Q. Did they say where it run from Mt. Adams, east of Mt. Adams north?

A. He says he never was there at Mt. Adams. They pointed from the place there, the junction, to a Mt. Adams, and from there they described the country to him. It is so long he forgot now. He didn't say whether they run a straight line from Adams to Goat Rocks. He don't know nothing about that part. He showed me on the Klickitat side where he belonged.

Q. Did they say anything about how it ran from Mt. Adams up to Goat Rocks? How did they describe the country from Mt. Adams, or the hump there, north to Goat Rocks? How did they describe that?

A. They described him the Goat Rocks would be

(Deposition of Chief Spencer.)

the northwest corner, and they didn't say anything about the line, and the line would go to Goat Rocks, from Mt. Adams to Goat Rocks. They showed him Goat Rocks for the northwest corner, pointed out to him.

Q. Where is this blazed tree that he speaks of?

A. He says he don't know exactly how far. The junction of the road from the main Camas Prairie is quite a ways down, quite a ways east.

Q. Ask him if he knows where Signal Peak is?

A. Yes, sir, when I have sight I used to see Signal Peak from the road when I was traveling.

Q. Did the Indians understand that their reservation extended on the west from Signal Peak?

(To which Mr. Cannon upon the part of the defendant objects for the reason that it is calling for a conclusion of the witness and incompetent.)

A. No, it was way west of Signal Peak where the boundary line is.

Q. Ask him if the country between Signal Peak and Goat Rocks and Mt. Adams is good hunting country, hunting grounds and berrying grounds?

A. Yes, sir.

Q. Who was Mr. Townsed, an Indian Agent?

A. Townsed was the first agent appointed by—Governor Stevens appointed Townsed for agent, first agent, and Dr. Lowsdale was the second.

Q. Did these men, Townsed and the other men that he speaks of, tell him that this junction of the Indian trail on the Goldendale road where the pile of stones was was the southwest corner of the reser-

(Deposition of Chief Spencer.)

vation? A. Yes, sir.

Q. How long after the treaty was that?

A. About two years since the treaty.

Q. Stick Joe is dead now, isn't he?

A. Yes, he is dead.

Q. Chief Eanias is dead also?

A. Yes, sir.

Cross-examination.

(By Mr. CANNON.)

Q. Did you ever hunt or pick berries north and west of Signal Peak?

A. He says he don't know what kind of berries they picked, but there is nothing but little huckleberries and strawberries, a big huckleberry.

Q. Did you ever hunt north and west of Signal Peak?

A. That used to be a great hunting ground, but nowadays there is nothing there.

Q. Did you ever hunt there?

A. He says I used to hunt when I was young. Says I used to kill lots of game there.

Q. Did you ever hunt or pick berries there since the treaty? A. Yes, since the treaty.

Q. Did you ever see Satas range of mountains?

A. He says he knows that country. That is his father's native country. That is where his father is.

Q. The range of mountains is between the Klickitat and Pisco river, isn't it, and Satas river, isn't it? The range of mountains is between the Klickitat river and Toppenish and Satas river?

(Deposition of Chief Spencer.)

A. Yes, he says he knows that country, he used to travel there.

Q. West of the Satas range was his country?

A. Yes, that is his country.

Q. Clear down to Vancouver? A. Yes.

Q. When Townsed and the other two men were with you at the pile of rock they told you that the reservation was one day's ride on horseback, didn't they?

A. He says he know that himself personally it is one day's travel from White Salmon to Camas Prairie outlet.

Q. Did Townsed and his men take you to the rock pile?

A. Yes, he says this way: When these three men came by his place they stop over night with him at his house. From his house they came to that rock pile next day.

Q. How far—how long did it take you to go from your house to the rock pile from his house at that time?

A. He says it is not very far where he was. He was at the Camas lake and north from there. He hardly thinks it took them a quarter of a day from Camas Lake to the rock pile.

Q. Which direction did they go—northeast?

A. He says we came towards the east.

Q. Why did Townsed tell you where the reservation boundary was?

A. He says this way: He don't now why that Townsed come to him and showed him the corner of

(Deposition of Chief Spencer.)

the reservation, maybe just because he was all alone left. His people was massacred by the soldiers at the time of the war.

Q. Did you later move on to the reservation?

A. Yes, I moved on to the reservation. I live on the reservation since.

Q. Where do you live?

A. I live right in the Simcoe Valley now where I first came. I am there yet.

Q. Do you live in the same place you lived when you first came on the reservation?

A. Very same place.

Q. Is the Simcoe Range quite a high range of hills?

A. He says that the hills isn't very high.

Q. The water flows to the west of them—it flows west and south to the east of them, it flows north and east?

A. Yes, he says the water flows east and west.

Q. East of them, the east side the water flows east and west side the water flows west into the Klickitat?

A. Yes.

Q. The country west of Signal Peak and north-west of Signal Peak is all high country, isn't it?

A. Yes, he says it is a high country, high hills. Kind of bench country.

Q. And they have very heavy snow there in the winter?

A. He says he never travels in the winter time, how deep the snow gets there in the winter time.

Q. None of the Indians do, do they?

(Deposition of Chief Spencer.)

A. Yes, some Indians that travels there in the winter time on snowshoes, but not on horseback or a-foot.

Redirect Examination.

(By Mr. AVERY.)

Q. Did anyone ever tell him to keep the whites off the reservation?

(To which Mr. Cannon upon the part of the defendant objects for the reason that it is immaterial and incompetent.)

A. Your question is answered by Governor Stevens' word. That is not my words, that is Governor Stevens' words, he says. He says when Governor Stevens talked to us about the country, and after he got through talking I says myself—I says, "Governor, I am a little afraid the white people will come to stole the country away from us." After awhile Governor Stevens says, "No, the white people will never come in on the reservation, and they must be kept off all the time. The country will be nothing but for Indian purposes." Says if Governor Stevens was living I could go right to him and tell him what he told us Indians in the treaty.

Q. Ask him if Governor Stevens at that time told him where they were to keep off from, what part the white men were not to go on.

(To which Mr. Cannon upon the part of the defendant objects for the reason that it appears that he and Governor Stevens were never on the reservation together.)

A. He says this way: Us Indians, when he first

(Deposition of Chief Spencer.)

come, we was awful afraid of you white people. You people are not sensible people like us Indians. You men go any place. If you don't come you come any way like a breechy stock. He says we have been suspicious from the beginning.

[Deposition of Charles Olney, for Plaintiff.]

CHARLES OLNEY, called, sworn, and testified as follows on behalf of the plaintiff:

Direct Examination.

(By Mr. AVERY.)

Q. What is your name?

A. Charles Olney.

Q. You are of Indian blood, are you not?

A. I am mixed blood.

Q. What is your age, Mr. Olney?

A. Fifty-five.

Q. Do you live on the reservation now?

A. Yes, sir.

Q. How long have you lived there?

A. Lived there since '65.

Q. What is your occupation now?

A. Now chief line rider.

Q. For whom?

A. For the Government.

Q. For the Government? A. Yes, sir.

Q. Under the direction of the Yakima Indian Agent? A. Yes, sir.

Q. Mr. Jay Lynch? A. Yes.

Q. How long have you been chief line rider?

A. Yes, sir.

(Deposition of Charles Olney.)

Q. How long have you been chief line rider?

A. Yes, sir, line rider for three years.

Q. What is a line rider, Mr. Olney?

A. A line rider is a range rider, similar to that.

Q. What are your duties?

A. My duties are to look after the white people that stop outside with stock and keep them off the reservation.

Q. Now, have you been around on the Indian Reservation very much? A. Yes, sir.

Q. For how many years?

A. I couldn't tell you when I started. It must be nine or ten years I have been around the reservation and boundary line.

Q. Are you familiar with the entire reservation?

A. Yes, sir.

Q. Have you been over all of it?

A. Yes, sir.

Q. Do you know where Camas Prairie is?

A. Yes, sir.

Q. How far is Camas Prairie—the expression has been used here “the outlet of Camas Prairie.” Just say what that is, what does it mean?

A. Well, I don't know exactly myself what they mean.

Q. Is there any point that is known as the Outlet of Camas Prairie any place?

A. The water runs from the Camas Prairie and empties into the Klickitat. That is where they call Outlet of Camas Prairie, I guess.

Q. Referring to the junction of the Indian trail

(Deposition of Charles Olney.)

and Goldendale road, isn't that the outlet of Camas Prairie?

A. Yes, sir.

Q. Do you know where the 51 mile-post is?

A. Yes, I have been there many times.

Q. I call your attention to the Barnard map attached to Plaintiff's Exhibit 3 introduced in evidence at the examination of E. C. Barnard, and called the Barnard map, and being attached to the printed pamphlet known as Document 621, all of which was marked Plaintiff's Exhibit "3" herein. Now, I ask you if thereon the junction of the Indian trail on the Goldendale road is approximately correct in its relations to the surrounding country as marked thereon, if the junction of the Goldendale—junction of the Indian trail and Goldendale road is the point that you are familiar with?

A. Yes, sir.

Q. Is that approximately correct on the map with respect to the surrounding country?

A. Yes, sir.

Q. Now, I ask you—you have been there many times?

A. Yes, sir.

Q. Now, I will ask you the character of the country from that junction to Grayback?

A. I don't—

Q. Well, is there any row or low hills or mountains, or anything—

A. Between the Grayback?

Q. And the Junction?

A. And the Junction. That is a rough country, nothing but deep canyons and cliffs on the side.

(Deposition of Charles Olney.)

Q. I call your attention on this map to Grayback Peak; you see it? A. Yes, sir.

Q. I will ask you the character of the country from Grayback Peak to mile-post 51 as marked on that map, see? A. Yes, sir.

Q. What is the character of the country between those two points?

A. All smooth, but hills on each side, timbered hill half way up, just about between half—from the half runs up to the 51 mile there is no timber at all, just bare.

Q. Is it at all raised? A. Yes, sir.

Q. A row of hills?

A. Yes, there is no canyon between them, just a high ridge like this around like (illustrating).

Q. Calling your attention to the dotted lines which go between the 51 mile-post and the source of the south fork of the Ahtanum, I ask you if you have ever been over that road?

A. Yes, I have been on this. This is a rough country. It is rocky and stony.

Q. Is that a mountain (indicating)?

A. That is a mountain. That is what they call the main Simcoe Mountain. That is the way they call it.

Q. Is this a ridge of mountains or a ridge of hills (indicating)?

A. It is a mountain, which is a one-hill mountain. The same mountain goes to the Horse Heaven country.

Q. Where is it located?

(Deposition of Charles Olney.)

(To which Mr. Cannon on the part of the defendant objects for the reason that it is self-evident on the map.)

Q. This Simcoe Mountain, where is it located?

A. I don't understand the meaning of it.

Q. Have you traveled up that line, those dotted lines (indicating dotted line between Mile-post 51 and Autahanum)?

A. Yes, sir.

Q. Just give the nature of the road over which you went.

A. You are getting me puzzled. This ought to be this way. You mean this way (illustrating on map)?

Q. I mean from the 51 Mile-post north.

A. This is the old boundary line (indicating).

Q. It is what the defendant claims as the boundary line.

A. In the first place—I thought—

Q. It is what the defendant claim is the boundary line.

A. Now, this 51 Mile-post right there (indicating), it is a high hill, and not the highest hill, but next to the highest hill, and runs down here to where is Stackman's Butte (indicating). (Stackman's Butte is situated on black dotted line about halfway between Mile-post 51 and where the military road crosses the dotted line.)

Q. Is this a range of mountains, this dotted line (indicating line from Mile-post 51 to Ahtanum)?

A. No, sir.

(Deposition of Charles Olney.)

Q. What is it?

A. This is all valley, level country.

Q. Little higher than—enough to shed water?

A. No, there is no water that sheds there, except way down towards Signal Peak (indicating) is Tepee Creek. That is the only creek runs from that. This is all valley, which is level country.

Q. How is it north of Signal Peak along that dotted line (indicating)?

A. Along Signal Peak there is water.

Q. North of Signal Peak?

A. Yes; north of Signal Peak a little spring branches that goes down to the Toppenish, that is, head of Toppenish Creek is here.

Q. Is that a higher ridge along there (indicating)?

A. No, just about the same as a level bunch of country like, which has little raises here and there.

Q. Have you been up the Hump east of Mt. Adams? A. Yes, sir.

Q. Where does the summit of the Cascades range run, between the Hump and Goat Rocks? Is it approximately as indicated on the green line (indicating)?

A. It is indicated on the green line. This is the summit of the Cascade range right here at Walp, and from Walp to Goat Rocks. This is the divide (indicating), what they call the divide. Water runs this way and that way (illustrating).

Q. Have you ever seen any marks along between Mile-post 51 and Grayback Peak?

(Deposition of Charles Olney.)

A. Yes, I have seen some marks there, quite a few. There at the 51 Mile-post is three or four different piles made by different surveyors, I suppose.

Q. I mean west of that towards Grayback?

A. Yes, blazed trees right along, and there is a big pile of rocks there just about six or seven foot diameter on the bottoms.

Q. Grayback Peak?

A. Yes, Grayback Peak.

Q. Do you know of any other marks along there, except blazed trees there?

A. I didn't see any between Grayback Peak. It is impossible for man to go horseback.

Q. Where are the trees that you speak of?

A. Here at that junction (indicating).

Q. I understand you to say that there were blazed trees between Grayback Peak and 51 Mile-post?

A. Yes, sir.

Q. Streak of blazed trees?

A. Yes, sir.

Q. Old blazes?

A. Yes, old blazes and new blazes, both. The old blazes shows just as plain as could be.

Q. Look to be very old?

A. Oh, yes.

Q. What do you mean by very old, approximately?

A. Well, so old, it has been marked for several years. It looks so different from the new blazes. Some of them is healing up and some of them ain't healed up yet, that is, kind of a deep hole.

(Deposition of Charles Olney.)

Cross-examination.

(By Mr. CANNON.)

Q. What do you mean by divide?

A. I mean that the divide, the water divides from the Cascade Mountains, the water flows east and other places west.

Q. You notice here, do you not (indicating dotted line between Mile-post 51 and Autahanum), this black dotted line follows closely between where the waters flow in one direction and another direction?

A. Yes, sir.

Q. You notice in each case that the water as indicated on the map flows in opposite directions from the dotted line?

A. Yes, sir.

Q. You would call that the divide, would you not?

A. Yes, that would be a divide, but that is not the divide I speak of.

Q. You are speaking of another divide?

A. Yes, sir.

Q. The Cascade divide, the main divide there for some twenty miles from east to west, it is all very high, isn't it?

A. No, not very high, kind of low mountains. Not high as Goat Rocks. It comes this way like and raises like this (illustrating). There is no water here on this ridge (indicating).

Q. How high is the ridge where there is no water? I suppose it varies, some places that are wide and some places it is not?

A. Yes, sir, that is the way it goes.

Q. The trees that were blazed, the old blazes, these

(Deposition of Charles Olney.)

were along the old trail, are they not, where the early settlers and the Indians used to travel?

A. No, the early settlers. The Indians never made no blaze marks for their travel.

Q. The early travelers did? A. Yes, sir.

Q. This road that you speak of, the Goldendale road, is an old road made by early soldiers and settlers?

A. It is made by Indians from the first.

Q. And was used by the Government, was it?

A. I don't know whether it has been used by the Government. I guess it was afterwards when the white people settled down.

Q. And these trees that you noticed were blazed, they may have been blazed five years and may have been blazed fifteen years, as far as you know?

A. No, there is one more blazed tree right there standing which you don't cut out. It is about that shape (indicating), pretty near one foot deep, just a hole like into the tree.

Q. How many blazes have you found between Mile-post 51 and the Goldendale road?

A. Oh, there is quite a lot, pretty near every fifty or one hundred yards apart.

Q. Say twenty of them, or fifty of them?

A. There is more than that.

Q. More than that? A. Yes, sir.

Q. You don't know who blazed them, of course?

A. Of course not.

Q. Are they all blazed in the one general direction, or are there blazes off in other directions?

A. Just follow the ridge. Don't blaze so straight,

(Deposition of Charles Olney.)

just the way the mountains run, just follow the backbone of it.

Q. You mean between Summit Creek and the creek south of Summit Creek? The name does not appear on the map.

A. Yes. I mean right here where the dotted line is (indicating), the green dotted line.

Q. The old military road, I suppose, crosses the black dotted line across the Satas Mountain range, as we call it sometimes, at the most convenient point, where there was a canyon where they could get through?

A. Yes, there is only one canyon, that Toppenish Mountain, Toppenish hill, where the military road goes. This is all the valley here (indicating).

Q. Standing at Grayback Peak can you see Goat Rocks?

A. Yes, can see it just as plain as I see you.

Q. Can you see Signal Peak? A. Yes, sir.

Q. And you can see Mt. Adams?

A. Yes, sir.

Q. Approximately, how far is it from Grayback Peak to Mt. Adams?

A. That is more than I can tell you. It is quite a distance.

Q. About how many miles?

A. I don't know; couldn't tell you. It took me two days to travel, I guess. You travel slow with pack-horses. I took a pack-horse along.

Q. Takes you two days to travel from the Hump?

A. From the Selah Valley.

(Deposition of Charles Olney.)

Q. To the Grayback Peak? A. Yes, sir.

Q. How large a prairie is Camas Prairie, or valley? A. It is quite a piece.

Q. Take you about two days to travel that?

A. Oh, no. It is not more than a quarter of a day of travel.

Q. That would be about how many miles, ten?

A. About eight or ten from one end to the other.

Redirect Examination.

(By Mr. AVERY.)

Q. I take it that Camas Prairie is the country that is west of the junction of the Indian trail on the Goldendale road? A. Yes, sir.

Q. Right in here? (Indicating.)

A. Right in here. (Indicating.)

Q. West and north a little, or practically west?

A. Well, it seems to me that Mt. Adams is kind of right in the center like. Camas Prairie comes right passes like and along that way, you know (illustrating).

Q. Then Camas Prairie is south of Mt. Adams, then, generally? A. Yes, sir.

Mr. AVERY.—I offer in evidence this map which, on its face, is marked "Drawn by James Lodge," and is numbered "773" above a mark or straight line, and "273" below the line, and is entitled "Survey of the Yakima Reserve, by Berry & Lodge, 1861," for the purpose of showing by that survey the southern boundary of the Yakima Reservation extended to the Klickitat River on the west, and it is conceded that this map was withdrawn from under

(Deposition of Charles Olney.)

the authenticating certificate, which is attached to the Barnard map put in evidence on Mr. Bernard's examination as Plaintiff's Exhibit "1," which is hereto attached and made a part of this record.

(To which Mr. Cannon upon the part of the defendant objects for the reason that it is incompetent and immaterial. No objection is made as to the authentication of the map because of the fact that it has been moved from the other papers, among which was the certificate.)

Mr. AVERY.—It is agreed that the testimony of Abe Lincoln may be taken under the notice that was given for this hearing and before the Examiner upon reasonable notice being given.

The signature of the witnesses to their respective depositions is waived by the parties, and it was stipulated that the complainant would *have and* including September 23d, 1908, in which to put in its testimony on its case in chief.

**[Examiner's Certificate to Depositions of Olney and
Spencer.]**

United States of America,
Eastern District of Washington,—ss.

I, Allen S. Davis, the duly appointed, qualified and acting Examiner in the above-entitled cause, and who, it was stipulated by the parties, should act as Examiner herein, hereby certify that the foregoing testimony in the above-entitled cause was taken before me on the 21st day of August, 1908, at my office, in the city of North Yakima, in the Eastern District

of Washington; that before testifying, each of the several witnesses was by me severally duly sworn to tell the truth, the whole truth and nothing but the truth, and where said witnesses were unable to speak the English language, such witnesses were sworn to testify through an interpreter, duly qualified, who had been theretofore duly and regularly sworn to interpret the questions asked of the witnesses and the answers thereto made by said witnesses truly, and to administer the oath to said witnesses as administered by the Examiner and truly to do those things; that said testimony was taken in shorthand with the consent of the parties and by such consent thereafter reduced to typewriting as hereinabove, and the signatures of the respective witnesses to their extended depositions were waived.

Done this 16th day of September, A. D. 1908.

(Signed) ALLEN S. DAVIS,
Examiner.

[Endorsements]: Published as per stipulation on file of the respective attorneys for the respective parties, this 21st day of June, 1909.

FRANK C. NASH,
Clerk.

Depositions of Chas. Olney and Chief Spencer.
Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21st, 1909. Frank C. Nash, Clerk.

[Depositions of Abe Lincoln et al.]

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), et al.,

Defendants.

The examination of witnesses in the above-entitled suit in equity was held, beginning on the 19th day of September, A. D. 1908, at the hour of ten o'clock A. M., on behalf of the complainant and the defendants, before me, a special examiner duly appointed and authorized to administer oaths, and to take and certify said depositions, in a certain suit now pending and entitled in the Circuit Court of the United States for the Eastern District of Washington, Eastern Division, wherein the above-named United States of America is complainant, and Northern Pacific Railway Company, a corporation, et al., are defendants, the complainant appearing by Honorable A. G. Avery, United States Attorney, and the defendants appearing by Messrs. Cannon & Lee; their counsel.

That the following named witnesses were examined before me, pursuant to the stipulation of the parties

by their counsel, each of said witnesses before being examined being first duly sworn, each for himself, and cautioned, deposed and testified herein set forth:

Stipulation [Re Deposition of E. C. Barnard, Exhibit, and of Facts].

It is stipulated by the attorneys for the respective parties that for the purpose of examining the witnesses, that the deposition of E. C. Barnard and the exhibits connected therewith, may be used for reference, in the present and the future examinations.

It is also stipulated by the respective parties that the Court may take judicial notice of the map marked as Exhibit No. 2 in connection with the deposition of E. C. Barnard, and of all the matters and things thereon shown, including the contents of both sides of the map, this map being known as the Mt. Adams Quadrangle, which was made by A. H. Sylvester, under a survey in 1903 and 1904.

It is also stipulated that the signatures of the witnesses to the deposition is waived by counsel for the respective parties.

It is also stipulated that the Court may take judicial notice of the treaty between the United States, and certain confederate tribes and bands of Indians designated as the Yakima Nation of Indians concluded at Camp Stevens, Walla Walla, June 9, 1855, ratified March 8, 1859 (12 Stat. at Large 951) and the Act of Congress of December 21, 1904 (33 Stat. at Large, 595.)

It is hereby stipulated by and between the complainant and the defendants in the above-entitled

action, by their counsel, that the following is a statement of facts involved in said cause, and that said statement shall be considered by the court as evidence in said cause so far as the same may be relevant to any issue in said cause, with like force and effect as though said facts were established by the testimony of witnesses produced and sworn, or proven by any other competent evidence in open Court.

I.

a. It is stipulated that the above-named Henry Yeackel purchased of the defendant Northern Pacific Railway Company, on February 9, 1902, for value, the following described lands, to wit:

Section One (1) in Township Six (6) of Range Fifteen (15), E. W. M., and that said premises are now and at all times since said date have been owned, possessed and occupied by said Henry Yeackel and his wife, subject to such claim, if any, as the United States Government may lawfully establish in this proceeding.

b. That John J. Zehner, one of the above-named defendants, purchased from the defendant Northern Pacific Railway Company, for value, on or about June 16, 1902, the following described premises, to wit:

Section Thirteen (13), Township Six (6), Range Fifteen (15), E. W. M., and that thereafter and prior to the commencement of this suit said John J. Zehner and wife sold and conveyed said premises to Henry Garner, and that said premises are now

and at all times since said date have been owned, possessed and occupied by said Henry Garner and wife, subject to such claim, if any, as the United States Government may lawfully establish in this proceeding.

c. That C. D. Wise and R. D. McCully, above-named defendants, purchased from the defendant Northern Pacific Railway Company, for value, on or about January 6, 1896, the following described premises, to wit:

Section Nine (9), Township Six (6), Range Fifteen (15), E. W. M., that thereafter said R. D. McCully purchased all the right, title and interest of said C. D. Wise in said premises, and that said premises are now and at all times since said date have been owned, possessed and occupied by said R. D. McCully and wife, subject to such claim, if any, as the United States Government may lawfully establish in this proceeding.

d. That Wilbur S. Badley, one of the above-named defendants, purchased from defendant Northern Pacific Railway Company, for value, on or about March 9, 1903, the following described premises, to wit:

Section Five (5), Township Six (6), Range Fifteen (15), E. W. M., and that said premises are now and at all times since said date have been owned, possessed and occupied by said Wilbur S. Badley and wife, subject to such claim, if any, as the United States Government may lawfully establish in this proceeding.

II.

It is stipulated that the map of general location of the line of the Northern Pacific Railroad Company, opposite the lands described in the bill of complaint herein, was filed as required by the Act of July 2, 1864, upon the 25th day of June, 1883, and was fully approved on the 29th day of June, 1883.

III.

It is stipulated that the descriptions of lands set forth in Exhibit "A" attached to Complainant's Bill of Complaint herein, together when the dates when said lands were patented, set forth therein, are correct, and that said lands were patented to the Northern Pacific Railroad Company in all said instances where said patents were issued on or prior to August 8, 1896. Said patents were so issued to said Northern Pacific Railroad Company. That all lands so patented after August 8, 1896, were patented to the defendant Northern Pacific Railway Company.

IV.

It is further stipulated that the Northern Pacific Railroad Company was duly organized and created as a corporation on the 2d day of July, 1864, by Act of Congress for the purpose of building and operating a railroad through the states and territories lying between said points, including the territory of Washington. That the Northern Pacific Railway Company is the lawful successor in interest of the Northern Pacific Railroad Company.

It is further stipulated that the Yakima Indian

Reservation now is, and at all times herein since the creation of said reservation was, occupied by from eighteen hundred to twenty-four hundred Indians under the supervision and control of an Indian Agent or Superintendent of the United States.

It is further stipulated that the Attorney General of the United States was duly authorized to, and has instituted and prosecuted this action by the United States Attorney for the Eastern District of Washington.

[Deposition of Abe Lincoln, for Complainant.]

ABE LINCOLN, called as a witness on behalf of the complainant, after being first duly sworn to testify the truth, the whole truth and nothing but the truth herein, testified as follows:

Direct Examination.

(By Mr. A. G. AVERY.)

Q. Your name is Abe Lincoln, is it?

A. Yes, sir.

Q. You are a halfbreed Yakima Indian?

A. Yes, sir.

Q. Where do you live?

A. I live at Fort Simcoe on the Yakima Indian Reservation.

Q. How long have you lived on the Yakima Indian Reservation?

A. I have lived on the Yakima Indian Reservation since '62, 1862.

Q. How old are you, Lincoln?

A. I think I am somewheres pretty near fifty-six,

(Deposition of Abe Lincoln.)

somewheres along there. I was born down at Vancouver.

Q. Where did you live prior to going on the Indian Reservation? A. White Salmon.

Q. White Salmon is in this Eastern District of Washington, isn't it, that is, it is on this side of the Cascades? A. Yes, sir.

Q. Down on the Columbia River?

A. Down on the Columbia River.

Q. And how far south of the Camas prairie is it?

A. It is—well, it is forty, I have forgotten now; it is over forty miles from Glenwood, southwest.

Q. Well, Glenwood is at Camas prairie, is it?

A. Yes, it is called Camas Prairie, but it is outside of the prairie, north.

Q. What was the occasion of your moving from White Salmon up on the Indian Reservation where you now are?

A. Because Yakima was set aside for an Indian Reservation, and where we used to live down at White Salmon that was taken away from Klickitat and moved into Yakima, and the Klickitats was moved into Yakima.

Q. And the Government moved you over into the Indian Reservation in 1862?

A. Yes, I came along with them.

Q. In 1862 the Government moved you over into the Indian Reservation?

A. In '61, I think it was.

Q. What has been your business, what have you done on the reservation, what is your occupation?

(Deposition of Abe Lincoln.)

A. Blacksmith.

Q. Have you done anything else during your residence there?

A. Well, I have done some interpreting. I was not called the interpreter, but they have called me into the office to interpret for the inspectors and Indian council.

Q. When the Government officers visited there, or anyone else?

A. Yes, sir.

Q. That had to talk Indian?

A. Yes, sir, they called me into the office, but I was blacksmith, and a Government employee.

Q. Have you at any time acted as a line rider or range rider on the reservation?

A. Yes, sir, I rode for two years.

Q. What are your duties as such line rider?

A. Well, I went down to see about stockmen fetching on to the reservation, or outsiders, the white people. Charley Olney, he was a Chief, the chief range rider, and I was under him.

Q. You worked under him?

A. I worked under him.

Q. Your business is to kind of police the reservation, isn't it?

A. Yes, to patrol the reservation.

Q. Are you the Abe Lincoln that went with the Barnard survey?

A. Yes, sir.

Q. And how familiar are you with the reservation, have you or not been all over it?

A. I know all over the reservation, I have been all over it, been clear around it, and beyond the lines.

(Deposition of Abe Lincoln.)

Q. Do you know where the so-called reservation line is that was surveyed by Mr. Schwartz, running up from mile-post 51 on the south boundary?

A. I know that line, yes, sir. I know where that came up from Mabton and went northwest down to the south fork of the Atanum.

Q. Do you know where that Schwartz survey strikes or meets at mile-post 51 and goes north or northerly towards the Atanum south fork?

A. Yes, I know just exactly where it is.

Q. Been over it and been over that line?

A. Yes, sir, been over it a good many times. I was there last year again.

Q. Now, calling your attention, to Plaintiff's Exhibit 1, being in the Bernard deposition, I ask you to look at the place thereon marked mile-post 51. Do you see it?

A. Yes, sir.

Q. I will ask you to look at a point there marked mile-post 29, which is—

A. 29 miles from the agency.

Q. Yes, and which is westerly, generally, from mile-post 51 where a line crosses the old military road. Do you recognize that point?

A. Yes, sir.

Q. What is the character of the country between those two mile-posts?

A. It is an open country, rolling mountains, no timber on them at all. A little bit east of mile-post 29 is a high peak with rocks on it, between 51 and 29 mile-posts. It is right on the divide.

Q. What divide?

(Deposition of Abe Lincoln.)

A. Of the divide that watersheds into Cedar Valley and down into Klickitat.

Q. Well, do you mean that this is—

A. The divide goes, of course, down to—

Q. Do you mean that there is a divide from mile-post 29 to mile-post 51? A. 51, yes.

Q. Is that a higher part than the rest?

A. It is not, 51 mile-post is the highest part. Then it goes down from 51 mile-post where it is and downhill and then goes in a kind of saddle like that (indicating) and then runs up again on the ridge and then it turns up from that survey that they got, northwest,—I forget that man's name—

Q. Schwartz?

A. Schwartz, it turns off from there and then runs down towards the 29 mile-post.

Q. Is it a ridge or hollow?

A. It is a steep ridge.

Q. What is the character of the country from mile-post 29 to Grayback peak, as indicated on this map?

A. Well, it is a ridge with a heavy timber on it.

Q. A ridge with a heavy timber on it?

A. Heavy timber on, no rocks, it is a round ridge.

Q. Is that also a watershed?

A. Yes. There is not much water running from that ridge only from—there is water running down from east, east of 29, no, I mean north, north from 29 mile-post. The water comes down, springs from this (indicating map, Exhibit 1). That is a ridge of mountains. This is a ridge running northwest

(Deposition of Abe Lincoln.)

from 51 mile-post towards Signal Peak.

Q. Now, what, if any, marks of any kind, blazes or monuments, or anything else, are there between mile-post 51 and Grayback peak, that is along this line indicated on Exhibit 1?

A. There is an old blaze right at 29 mile, old blazes, west of a crotch forked tree and east. Then beyond that—

Q. And east of what, 29 mile-post?

A. Yes, east, east going uphill.

Q. How far do they run west from 29 mile-post toward Grayback peak?

A. Well, these blazes run, I guess, about fifty yards, and then they stop right there, those blazes.

Q. Are you familiar with the point on this map, Exhibit 1, which is marked "Junction of Indian Trail and Goldendale road"?

A. Yes, sir.

Q. You have been there many times?

A. Yes, sir.

Q. What, if any, marks or monuments or blazes are there at that point, at that junction?

A. Well, there is two pine trees, one facing north, marked—which Barnard cut out, and one tree was facing east towards Grayback. Them is the only two trees that I know of that was blazed.

Q. Were those old blazes or new ones?

A. That was old blazes.

Q. Have you any knowledge as to how old they were?

A. They was over, I think they was marked blazes

(Deposition of Abe Lincoln.)

there over forty years ago.

Q. You mean forty years ago from now or when you saw them?

A. When I saw them, when I took Barnard there.

Q. When was that, do you know when it was?

A. I don't recollect. I knew he was in there once in a September.

Q. You will note on this map Exhibit 1 it shows "Spencer point," Goat Rocks, Walp, Mt. Adams and Hump. Have you ever been in that country so named and designated on this map?

A. Yes, sir. Yes, I was there this summer again.

Q. How many times before that?

A. And many times before that.

Q. I will ask you to notice what it says on this map. There is a line there that says "Summit of the Cascade Mountains." I will ask you whether or not that is in fact the summit of the Cascade Mountains?

A. Yes, sir, that is the summit.

Q. Is that or not the main range of the mountains?

A. Yes, sir.

Q. This that you take to be between Signal Peak and Walp and Spencer Point and the hump, is that or was that at any time ever a hunting ground?

A. Yes, sir; that is where the Indians always used to do their hunting.

Q. How was it for picking berries?

A. Picking berries, that is where they picked berries, up to Walp; there are Indians there this summer.

(Deposition of Abe Lincoln.)

Q. Are there still good berry patches there?

A. It is all ruined by sheep.

Q. Well, it has been ruined by sheep recently, that is. How long since it has been ruined by sheep?

A. Since that Stabler line was established for a boundary line, from 51 mile-post around by Signal Peak to the South Fork of the Atanum. Since that time of the Stabler line. They called it the old boundary line, Schwartz survey, we call it the Stabler line. He is the one that called that Cascade Mountains. He was our agent. I think his name was W. S. Stabler. He was our Indian Agent at the time that survey was made.

Q. That was before Irwin?

A. Yes, Irwin came there afterwards.

Q. Now, Lincoln, what has been the practice of the Indians as to going up in that country—I refer to the country north and northeast of the hump, towards Walp and Spencer's Point—what has been their practice in regard to going up there summers and camping?

A. Well, they go up and pick huckleberries, and hunt and gather pine nuts around Mt. Adams. There is a whole lot of pine nuts there. This year there wasn't one. Nothing this year.

Q. Did they go up there in considerable numbers?

A. Oh, yes; pretty near all the Indians goes up in the mountain.

Q. Every summer? A. Every summer.

Q. Well, how long have they been doing that?

(Deposition of Abe Lincoln.)

A. Well, ever since there was Indians for hundreds of years. I know I go up there every year myself. Ever since I can recall, a little bit of a boy, we used to go up there and kept going up there and go up there now.

Q. Now, Lincoln, what do you know about the Indian Agent, did you ever know of—I mean Yakima Indian Agent—collecting rents from the the whites? A. Yes, sir.

Q. For pasturing stock on any part of this land, west of the Schwartz survey, and within the reservation as surveyed by Mr. Barnard?

Mr. CANNON.—Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir, James H. Wilbur was the Indian Agent at that time that collected them.

Q. Is he the same one known as “Father Wilbur”? A. Yes, sir.

Q. Did he collect rents or pasture fees from the whites? A. Yes, sir, he did.

Q. For what purpose?

Mr. CANNON.—Same objection.

A. For that purpose. Yes, sir, he charged them one dollar a head for cattle. They run cattle and horses there. There was no sheep at that time.

Q. What did he use to do with the money?

A. He spent the most of that money and bought a sawmill for the Indians.

Q. Where was the sawmill located?

A. It was located about three miles east of the old sawmill where we go now, it is on the old mili-

(Deposition of Abe Lincoln.)

tary road, nine miles from the agency on the old military road.

Q. Then it was about nine miles from Ft. Simcoe? A. Yes, sir.

Q. Did you have an opportunity to observe whether the Indians at any or all times claimed this land as being within the reservation which is west of the Schwartz survey, and within the Barnard survey?

A. Yes, that is our understanding of the reservation. That is the reservation ever since the treaty was made between the chiefs with Governor Stevens, and we claim it now that it is reservation.

Q. Well, has that question come up at the agency between the whites and the Indians a number of times, and you acted as interpreter?

A. Yes, sir.

Q. Can you give me any instances where the Indians protested to the Indian Inspector about this land being their reservation and not belonging to the whites?

A. Well, the inspectors always came to the Fort there, to the agency, came to look after matters, and the Indians made complaint to the Inspectors and the Inspectors promised that they would help them, have the department to get it back to the Indians, have that reservation go back to the reservation.

Q. Did you interpret at those interviews?

A. Yes, sir.

Q. About when were they, Lincoln, when did they take place?

(Deposition of Abe Lincoln.)

A. I say it was when, when we first made our complaints, was in '82, '3 and '4, and then kept on from that time.

Q. Up to when?

A. Up until now. That Schwartz survey was a long time afterwards, but you see the settlers from outside came in and settled in the reservation and we made a complaint to General Milroy, he was our next Agent after Father Wilbur, and the agency General Milroy, wrote to the Land Office down at Vancouver, and Milroy told me that, I was talking with Milroy about it—

Mr. CANNON.—The conversations with Milroy are objected to as incompetent.

A. Then Milroy told me that he cannot do nothing with the land office at Vancouver about that line because the Government had ordered that to be surveyed in the townships and for white settlement. That is the way Milroy explained it to me, and I told the Indians, notified them.

Q. Now, did any of the Government officers ever tell you where the reservation lines were?

A. None of those inspectors knew anything about where the lines was. All they knew of that was that they read in the treaty book, out to the Cascade Mountains. The Indians knew where our lines was and they explained to the inspectors where our boundary line was, and then they said, the inspectors, promised the Indians that they would go back to Washington and see the Government and have it all fixed to go back to the Indians again.

(Deposition of Abe Lincoln.)

Q. Did you interpret in any of those interviews to the white inspector, or any Government officials down there, where the Indians claimed that their reservation line was?

A. Yes, I explained that, and the Indians told the inspector. I explained it to the inspector where the boundaries was.

Q. Where did you explain where it was?

Mr. CANNON.—That is objected to as not the best evidence.

A. Just where I told you.

Q. Well, take this Exhibit No. 1 and explain your statement either on there or independent of there, and tell where the Indians claimed.

A. They claimed from the south fork head of the Atanum, a straight line to Goat Rocks, then from Goat Rocks following the divide to Mt. Adams, and from Mt. Adams a straight line to the junction of the Indian trail and Goldendale road.

Q. The junction of the Indian trail and the Goldendale road?

A. And the Goldendale road, and then from the junction of the Indian trail with the Goldendale road right straight east to Grayback.

Q. East to Grayback, did you say?

A. Yes, east to Grayback and then following the divide clear down to Mabton.

Q. Now, tell me on this map where Mabton is?

A. Mabton is right east. (Indicating on Plaintiff's Exhibit 1.)

(Deposition of Abe Lincoln.)

Q. Here is the Yakima River, where is Mabton?

A. Mabton is right on there some place.

Q. Is it on the Yakima River?

A. Right on the Yakima River.

Q. Is that where the southerly boundary of the reservation joins the river?

A. East.

Q. Well, the southeasterly boundary of the reservation joins the Yakima River at Mabton does it?

A. Yes, sir. Then following the river, the Yakima River, clear out to the mouth of the Atanum and following the south fork, and following the Atanum River clear out to the fork and then following the south fork of the Atanum. That is our explanation to the inspectors that the Indians made.

Q. You are familiar are you with what the Indians claim during all these years?

A. Yes, sir.

Q. And that is what they claimed, was it?

A. That is what they claim.

Q. Have they ever consented, so far as you know, to any other reservation?

A. Well, they all consented and we all consented to where I took Barnard around.

Q. Yes, and no other?

A. And no other.

Q. Is mile-post 29 a mile-post on the old military road or a mile-post on the surveyed boundary line?

Mr. CANNON.—Objected to as calling for a conclusion.

A. Yes, sir.

Q. Is this mile-post 29 a mile-post on the old

(Deposition of Abe Lincoln.)

military road or is it a mile-post on the survey line?

A. No, it is not on the survey line, but is twenty-nine mile tree, it is not a post it is a tree. The military had measured the distance to The Dalles and it is 29 miles from the fort, from the agency, on the military road, on the way to The Dalles, but it happens to be right on the line, on the boundary line.

Q. Well, it marks, as I understand you, it don't mark any distance on the reservation line, but it does mark a distance on the military road.

A. Yes, sir, on the military road, but it just happens to be on the boundary line, that is all, but it does not mark the distance.

Cross-examination.

(By Mr. E. J. CANNON.)

Q. In other words, the military road was marked out in miles and mile-posts located?

A. Yes, sir, to The Dalles.

Q. Clear from Ft. Simcoe down to The Dalles?

A. Down to The Dalles.

Q. And this mile-post 29 is quite close to what you say is the survey line? A. Yes, sir.

Q. Well, it is about a mile or two off of it, isn't it? A. No, sir.

Q. It is not right on it?

A. It divides, the ridge runs there to the boundary line and it is about, oh, about 200 yards off.

Q. I thought it was more than that?

A. No, maybe 100 yards.

Q. Now, do you know where the North Yakima road to The Dalles crossed the Indian reservation,

(Deposition of Abe Lincoln.)

down about at the old stage station or Satas Gap, you remember where that is?

A. Yes, I know where the station used to be on the Satas.

Q. Now, from Satas Gap to mile-post 51 is a high ridge of mountains, isn't it?

A. No, you have to go south there, but maybe it is on the the summit, there is no station. There was one down at, down around Satas, Satas Creek, there was one station there and then there was one station on the summit.

Q. That is right.

A. Yes, and one station on the summit. Well, the ridge run right down, you follow right up this ridge that runs up and down. Of course there are high places before it comes to the 51 mile-post.

Q. And then at 51 mile-post it turns north?

A. Northwest.

Q. Northwest up to Potato Butte or Stagman Butte?

A. It runs right along Stagman Butte.

Q. And over Potato Butte? A. Yes, sir.

Q. And then it runs over pretty close to where the old military road crosses it?

A. Well, Stagman Butte, military road, that is the military road.

Q. It is west of Stagman Butte?

A. It is northwest from Stagman Butte.

Q. And then the same ridge of mountains run around to Signal Peak?

A. It passes Signal Peak east.

(Deposition of Abe Lincoln.)

Q. But close to Signal Peak? A. Yes, sir.

Q. Perhaps a couple of miles?

A. Oh, it passes half a mile from the foot of Signal Peak?

Q. It passes half a mile from the foot of Signal Peak? A. Yes, sir.

Q. And then the same ridge of mountains run off towards the south fork of this—well, the same ridge then runs west of Toppenish Creek to the south fork of the Simcoe river?

A. Yes, sir, right west of it.

Q. Now, Simcoe ridge is a ridge you might say of mountains running from north mile-post 51, northwest of mile-post 51, Simcoe ridge of mountains? A. Post 51?

Q. Yes, sir.

A. Yes, it runs—they call it, we call it Satas Mountains. The head of Satas runs there. Simcoe is a long ways from that. The stock men call it Simcoe Mountains. We never call it that.

Q. You were just a small boy when you came on the reservation?

A. Yes, I was about six years old.

Q. And as long as you can remember the Indians have been going out there to Goat Rocks to the berry patches? A. Yes, sir.

Q. To pick berries?

A. Yes. All those berry patches up on the mountains, away up all of these trails on the Cascade Mountains.

Q. They do that now, don't they?

(Deposition of Abe Lincoln.)

A. Yes, sir.

Q. And did it this year? A. Yes, sir.

Q. They have every year that you know of?

A. Yes, sir.

Q. Except that of late years the sheep have so often eaten up the berry patches that it don't pay to go up there?

A. Well, they go up there and the Indians make a kick and they keep off of the berry patches. They ruined one berry patch right there northwest of the head of White Salmon. Trout Lake, the Indians went up there and of course the forest reservation is near and the Government lets it out to the sheepmen.

Q. To the sheepmen?

A. And the same way at Walp.

Q. In other words, wherever the sheep get in they kill off the berries? A. Yes, sir.

Q. And so long as they merely herd cattle and horses they did not kill off the berry patches?

A. They did not reach the berry patches, they stayed in around Cedar Valley and Camas Prairie, and that is where they ran their cattle and horses, but they don't run the cattle and horses clear back to the berry patches.

Q. Now, the sheep came in there about '82, didn't they? That would be twenty-six years ago the sheep began coming in there for the last twenty years or so? A. Yes, sir.

Q. Maybe twenty-five years?

A. Well, they have been coming there for—it is

(Deposition of Abe Lincoln.)

over twenty-five years.

Q. And as quick as the sheep began to come in there the Indians began to keep them out?

A. They made some complaints and tried to write to the department to help them keep them off. While they was picking berries, and after they got done picking they would come on.

Q. Of course, these Government inspectors that were out there did not claim to know where the line was, did they? A. No.

Q. They just simply talked with the Indians and then they told the Indians they would try to help them out? A. Yes, sir.

Q. And then they didn't do it?

A. They came out there to inspect a school and what property the government had sent out for the Indian purposes, and then the Indians came to kick about the reservation line. The Government did not send them out to look out for the reservation line but the Indians wanted help from the Government about the boundary line and they made complaints to the inspectors and the Indian agents, and they wanted help every time the inspector came out, but it seemed it didn't amount to very much.

Q. As a matter of fact, it is pretty hard for anyone to tell even now where the main ridge of the Cascades is, isn't it—it is scattered all over there, isn't it?

A. Oh, I know where it is; I know clear down the Cascades. I have been on the summit up there clear down to the river.

(Deposition of Abe Lincoln.)

Q. Well, all that territory from Signal Peak west until you get away over across the mountain is very high country, isn't it?

A. No, Goat Rocks is very high, and from Walp up to Mt. Adams is a low country, a low flat country.

Q. I say—

A. (Continued.) But it is a watershed at the west, just the same. When you would be right north of Mt. Adams you would not know where the ridge was, it is so flat.

Q. North of Mt. Adams you would not know where the ridge was? A. Yes, sir.

Q. And all the water, however, from that country north of Mt. Adams flows into the Klickitat river, don't it?

A. Yes, and then it comes out from that divide.

Q. And all the waters from the survey of Schwartz flows east into the Yakima river and down in there? A. Yes, sir.

Q. And the waters on the other side of that line flow west and south into the Klickitat, and then into the Columbia?

A. Into the Klickitat and then into the Columbia?

Redirect Examination.

(By Mr. AVERY.)

Q. You stated to Mr. Cannon that the Indians called that ground, north or at least some of it north of mile-post 51, Satas mountain?

A. No, right at 51.

Q. At 51? A. Yes, they call that Satas.

(Deposition of Abe Lincoln.)

Q. Well, did they call that range of hills continuing north on the Schwartz survey, did they call that a mountain or a hill or what?

A. Just a hill, they don't call it a mountain. At Logy creek and Satas creek it is called Satas Mountain. Simcoe Mountain is right between Hump and the agency, that is where the Simcoe Mountain is, and the south fork of the Atanum and the head of Simcoe Creek.

Recross-examination.

(By Mr. CANNON.)

Q. The south fork of the Atanum runs pretty nearly south, doesn't it, until it pretty nearly meets the Simcoe river?

A. No, it runs right straight direct, it runs right from the highest point, it runs southeast, just a little west, about 100 yards. Simcoe goes east from a spring.

Q. Do you mean the Atanum does?

A. Yes, just runs a little west down into a hollow and then follows the hollow right down, it runs, where it first commences, it runs a little more north, until it gets pretty well down, and then runs east, and it makes a whole lot of turns.

Mr. AVERY.—Are you talking about the Atanum?

Mr. CANNON.—Yes.

The WITNESS.—The south fork of the Atanum, but this other survey they got runs on that ridge for quite a ways, and then it came to the spring draining running into the Atanum and then it takes

(Deposition of Abe Lincoln.)

that for the boundary line. It don't follow the main fork of the Atanum up to the top of the mountain.

Witness excus

[Deposition of A. H. Sylvester, for Complainant.]

A. H. SLYVESTER, called as a witness on behalf of the complainant, after being first duly sworn to testify the truth, the whole truth and nothing but the truth herein, testified as follows:

Direct Examination.

(By Mr. AVERY.)

Q. Your name is A. H. Sylvester, is it?

A. Yes, sir.

Q. And what is your present position?

A. I am Forest Supervisor in charge of the Wenatchee National Forest.

Q. You have been in the forestry service since about when?

A. From the 16th of April of this year.

Q. Prior to that what position did you occupy with the Government?

A. I was topographer in the United States Geological Survey.

Q. And how long had you been occupying that position or connected with the Geological Survey?

A. Since 1895.

Q. I call your attention to what is known as the Mt. Adams quadrangle, which has been marked Plaintiff's Exhibit 2 and which purports to have been made by A. H. Sylvester, and ask you if you are the man that made that quadrangle?

(Deposition of A. H. Sylvester.)

A. Yes, sir.

Q. And map? A. Yes, sir.

Q. I will ask you how much time you spent in that part of the country that the map purports to cover?

A. I worked at the map two summer seasons; in 1903, probably four months and a half, and about five months in 1904, during the summer season.

Q. Then you spent about nine months and a half on that ground preparing the map and examining the ground? A. Yes, sir.

Q. And doing the things that the map made necessary? A. Yes, sir.

Q. I take it that that means you were all over this ground?

A. Very much over the whole area, the whole territory shown on the map.

Q. I will ask you, Mr. Sylvester, if you are familiar with the topography and geography of the country covered by that map?

A. Yes, sir, I am thoroughly familiar with it I may say.

Q. I will ask your attention then to mile-post 51, as shown on the Exhibit 1 in the Barnard deposition, and ask you if you have been north from that point to the south fork of the Atanum, over what has been called the Schwartz survey, and sometimes been called the old reservation line?

Mr. CANNON.—That is objected to for the reason that the map does not cover the territory around mile-post 51, but evidently begins about eight or ten miles north of it.

(Deposition of A. H. Slyvester.)

A. I have not been at mile-post 51 but otherwise than that I have been over very nearly all of that ridge in the preparation of that map. I was over the ridge from the head of the south fork of the Atanum to the boundary line of the map, and in the course of previous work—

Q. You mean of your map?

A. Of Exhibit 2, and in the course of previous work I have been over a good deal of the ridge on to the south.

Q. What is the nature of that ridge from the south fork of the Atanum down to the point where it intersects the east side of your map?

A. In general it is a broad, ~~flat-topped~~ ridge, essentially a plateau or ~~tableland~~, with the exception of the ridge east from Signal Peak, where it is a well-defined, sharp-topped ridge.

Q. How far does that well-defined, sharp-topped ridge go on your map beyond the east line of it?

A. Does it go beyond the east line of my map?

Q. Yes, that well-defined ridge that you say?

A. Yes, that continues to the east and southeast to the mountain that is known by the whites as Simcoe mountain, and the Indians as Satas mountain.

Q. Well, is that mountain on this Barnard map, Exhibit 1, can you tell?

A. Yes, sir; the Simcoe or Satas mountain is the large mountain lying south of the Pass where the military road crosses to this ridge on which mile-post 51 is located, and including a number of large spurs running to the east, and between the various

(Deposition of A. H. Sylvester.)

forks of the Satas. This is Logy creek, a fork of the Satas, and this mountain lying like this (indicating) is familiarly called Simcoe mountain by the stockmen.

Q. Then, you mean that there is a mass of higher ground east of the old military road, north of mile-post 51, and south of the pass, where the military road crossed the old reservation line, extending to some little distance to the east which is known as Satas mountain?

A. Simcoe or Satas mountain, yes, sir.

Q. Is that a well-defined sharp peak or is it rather a flat or is a round upheaval of the ground there? Describe it as well as you can.

A. There are points or areas along this mountain which are a well-defined ridge. There are other parts, perhaps for half a mile that are rather flat and you can only define the summit by knowing the direction in which the water flows.

Q. How long is this mountain? To the north that means I suppose?

Mr. CANNON.—You mean to the north of 51?

Mr. AVERY.—Yes.

A. I should think between six and eight miles.

Q. Have you ever been on Grayback peak?

A. Yes, sir.

Q. As marked on this Barnard map, Plaintiff's Exhibit 1?

A. Yes, sir.

Q. What is the nature of the country or ground between Grayback Peak and mile-post 51 in the east?

(Deposition of A. H. Sylvester.)

A. A well-defined ridge covered mostly with an open growth of yellow pine, extends from Grayback to mile-post 51. Maybe saddles or divides intersecting it, but it is unquestionably and easily followed, a well-defined ridge.

Q. What do you say, does this ridge extend beyond Grayback in the west?

A. Beyond Grayback to the west the ridge is still well defined, but it drops off very rapidly into the canyon of the Klickitat river.

Q. Yes.

A. The ridge accordingly continues to the west, west of the Klickitat river, the river having simply made a cut or gap in this ridge.

Q. Does it go on to the point known as the junction of the Indian trail and the Goldendale road, approximately?

A. The ridge would pass to the south of such junction.

Q. Well, very much to the south of it?

A. The summit of it would probably be a mile from that junction.

Q. I believe you told me when you were in my office that you were down there looking for stakes or blazes; is that right?

A. Only for section corner stakes, and not for the old survey marks.

Q. Well, did you see any blazes or monuments of any kind between the junction of the Indian trail and the Goldendale road, mile-post 51?

A. No, sir.

(Deposition of A. H. Sylvester.)

Q. You did not? A. No, sir.

Q. You were not looking for them at all?

A. No, sir.

Q. Calling your attention to Exhibit 1 again, and also to the area which is west of what has been called the old reservation line, or the Schwartz survey, and included by what is marked on this map as the Barnard survey, what is the character of that country? I would like to have you describe it as well as you can and what grows on it, and how it looks and the soil?

A. I had better take it up by districts, perhaps, to describe it best.

Q. Very well.

A. The area marked on your blue map, Exhibit 1, as Cedar Valley is a low lying canyon heavily timbered with yellow pine, intersected by one very deep canyon at its southwest part, and by another rather deep canyon further to the west. The soil of this Cedar Valley is good. The timber in the valley was practically all killed some eighteen years ago by the devastation of a moth or miller and at the time the map was being made, in the summer of 1904, a dense growth of young pines had started over this area. Shall I go into the settlement of that at all?

Q. You can go up north.

A. The Cedar Valley is bounded at the north by a rather high ridge, which is covered with the same sort of timber growth and open pine forest.

Q. May I ask you which way the ridge would run?

(Deposition of A. H. Sylvester.)

A. It would run east and west practically.

Q. All right.

A. With more or less grazing. The Klickitat river intersects the whole area forming a deep valley, covered with the same pine forest. To the west of the Klickitat the country rises rapidly to a second high plateau, which is more or less intersected by deep canyons. North of the west fork of the Klickitat—is that shown on that map—north of the west fork of the Klickitat which starts from the letter "K" there is a section of high mountain mass where the timber is of a different character, small pine, fir and hemlock, the mass culminating in the points of Jennie's Butte and John's Butte. Then in the northern part of the area the country is much more broken, the timber is small and of comparatively little value while the grazing is good. There are a number of meadows along the various streams of from 20 to 300 acres in extent, which offer fine pasturage for cattle or horses as well as sheep.

Q. I notice on your map there is a point in the angle of the Barnard survey east of Mt. Adams which is named Goat Butte. I will ask you if that is the same point on the Barnard survey that is named Hump?

A. Yes, sir; the points are identical.

Q. Looking at this Barnard map, Plaintiff's Exhibit 1, I will ask you whether or not the line on there marked "The summit of the Cascade Mountains," is the summit of the main range of the Cascade Mountains?

A. Yes, it is.

(Deposition of A. H. Sylvester.)

Q. Is this timber of a scrubby character or is it better than that—I mean in this disputed tract here that I speak of?

A. A great deal of it is very much better than scrubby. It is a pine timber that will go from 10,000 to 25,000 feet per acre.

Q. Per acre?

A. Yes, sir. There is of course a great deal of scrubby timber, and there is a number of areas that have been burned, but only in the areas of scrubby timber. There is an area north of Mt. Adams which is covered with a dense growth of excellent spruce and cedar.

Q. Is that map that you made that is marked in the Barnard deposition as Exhibit 2, a correct representation of the country which it purports to cover, in connection with the directions and legends and printed parts of the map and on the back of it?

A. Yes, sir.

Cross-examination.

(By Mr. E. J. CANNON.)

Q. And the figures that appear in brown color and the same as that little line that appears there, represent the altitude above sea level?

A. Yes, sir.

Q. I notice Glenwood here has upon it the figures 1896. That means that it is 1896 feet above sea level? And all this territory from the Klickitat river westerly to in the neighborhood of Cedar Springs and southerly past and beyond the south line of your map is about the same altitude?

(Deposition of A. H. Sylvester.)

A. Yes, sir.

Q. I notice here upon the southeast corner of the map here the name Summit Creek. That is the same Summit Creek as appears just north of Grayback Peak on the Barnard Survey, isn't it?

A. Yes, sir.

Q. That creek runs into the Klickitat?

A. Yes, sir.

Q. Then, this ridge of mountains or high hills that you speak of, and known as Grayback Peak is southerly of that then? A. Of that creek?

Q. Southerly of Summit Creek?

A. Yes, sir.

Q. And after that ridge crosses the Klickitat river, or after you get beyond the Klickitat river, the range extends southerly or southwesterly in that direction toward the Cascade Mountains or toward the Columbia River rather?

A. Toward the Cascade Mountains.

Q. It is some distance south of Glenwood, isn't it? A. Yes, sir.

Q. How far about to the summit of that ridge, if you know, from Glenwood?

A. About four miles south of Glenwood.

Q. Four miles south of Glenwood?

A. Yes, sir.

Q. And it continues on and where does it again strike the Cascade range?

A. The range that you speak of south of Glenwood is interrupted more or less by low gaps in the area south of the Camas prairie. Camas prairie is

(Deposition of A. H. Sylvester.)

a flat country lying south of Glenwood, which would be about in this position (indicating on map).

Mr. CANNON.—The witness indicates a tract perhaps covering half a township, immediately south of that appearing on the map, and immediately south of Glenwood.

The WITNESS.—The ridge here, the ridge south of Glenwood would join near the main summit of the Cascade Mountains. The summit of the Cascade Mountains from Mt. Adams turns west and passes around the head of the White Salmon river.

Q. Passes west in which direction?

A. West and southwest.

Q. Then, as a matter of fact, the present Barnard line does not extend westerly to the summit of the Cascade range? A. No, sir.

Q. About how many miles does it fall short?

A. The point Goat Butte in which that line extends is about three miles east of the summit of Mt. Adams which is on the summit of the Cascade range.

Q. And all of this territory that we find contained on your map Exhibit 3, the northerly townships on the east line empty its water into the Klickitat river, the Klickitat drains all of the territory covered by the map excepting practically the three townships, the north three townships of the east tier of townships appearing on the map.

A. All, with the exception of the area in the northwest part of the map to the west and north of the Barnard line between Lewis County and Yakima County and a small portion north of Mt. Adams,

(Deposition of A. H. Slyvester.)

this runs west and there is a little drainage that runs north. North of the Klickitat ridge the drainage goes to the Tieton river.

Q. In other words, north of the Clickton ridge the waters flow north or northerly and toward the Glaciat? And west of Glaciat Butte the waters flow west? A. Practically, not quite.

Q. Approximately, I mean, and except as I have stated, and except those three townships, the water practically all flows into the Klickitat river.

A. That is correct, with the exception of perhaps thirty square miles in the northwest part of the map which drains the Cispus river. There is another small area south of Mt. Adams which drains into the White Salmon river.

Q. Mr. Slyvester, will you please take this blue pencil and mark on your map, being Exhibit No. 2 in the Barnard deposition, that line of Plaintiff's Exhibit 1, which indicates the Schwartz survey, being the long dotted line from the Attanum southeasterly to mile-post 51? Will you do that?

A. I will. (Witness marks a blue line on the map, Plaintiff's Exhibit 2, as requested.)

Mr. CANNON.—Now, put your initials here on the end of the line.

A. (Witness puts his initials upon the blue line just drawn by himself, at the southeasterly end of the line.)

Redirect Examination.

(By Mr. AVERY.)

Q. Please state whether or not you examined the

(Deposition of A. H. Sylvester.)

complaint herein and know the description of the lands in Exhibit "A" therein which is made a part of said complaint, being the land which is in controversy herein, and if you have, please state whether or not that land is included within the boundaries of the Yakima Indian Reservation, as surveyed by E. C. Barnard, and indicated on the Barnard map, being Plaintiff's Exhibit No. 1, in this case.

A. Yes, I have examined the description of the lands in controversy herein, and they are within the boundary lines of the Yakima Indian Reservation, as shown on Mr. Barnard's map, which you refer to.

Witness excused.

Mr. AVERY.—I offer in evidence a *lis pendens* which purports on its face to have been filed in the office of the County Auditor of Yakima County, Washington, at the request of A. G. Avery, on January 11, 1907, and the certificate thereon that it is so filed, with the seal of the Court.

(*Lis Pendens* marked Plaintiff's Exhibit 5.)

Mr. AVERY.—Now, I offer in evidence a map, purporting on its face to be one prepared by Isaac I. Stevens, dated April 30th, 1857. This map is under the certificate of the Acting Commissioner of Indian Affairs, C. F. Larabie, and dated February 12, 1906. I offer this map in evidence for the purpose of showing that the reservation extends and was intended to extend to the main ridge of the Cascade Mountains and what was then thought to be the location of the Klickitat river. The map is on a very small scale, and it is not my purpose to put this map in evidence

for the purpose of showing the precise southwest boundary line of the reservation, but to show that the reservation extends to the main ridge of the Cascade Mountains. I do not desire that the complainant be bound by the line showing the line of the southwest boundary of the reservation.

(Map last offered marked Plaintiff's Exhibit 6.)

Mr. AVERY.—We rest in our case in chief.

Here an adjournment was taken, subject to three days' notice.

Thursday, September 24th, 1908, 2 o'clock P. M.

Taking of testimony resumed pursuant to adjournment. All parties present.

[Deposition of George A. Schwartz, for Defendants.]

GEORGE A. SCHWARTZ, called as a witness on behalf of the defendants, after being first duly sworn to testify the truth, the whole truth and nothing but the truth herein, testified as follows:

Direct Examination.

(By Mr. A. B. LEE.)

Stipulation [Re Deposition of G. A. Schwartz, etc.].

It is stipulated by the attorneys for the respective parties that for the purpose of examining the witness George A. Schwartz, that the exhibits attached and connected to the deposition of E. C. Barnard, may be used for reference in the present and future examinations.

It is also stipulated that the deposition of George A. Schwartz may be taken at this time before John

(Deposition of George A. Schwartz.)

H. Pelletier, special examiner, without notice, and may be read with the same force and effect as though taken on notice or commission.

It is also stipulated that the signature of the witness to the deposition is waived by counsel for the respective parties.

Q. Your full name is George A. Schwartz?

A. George A. Schwartz.

Q. Where do you reside?

A. Olympia, Washington.

Q. How long have you lived there?

A. Well, off and on I have lived there since 1883.

Q. What is your business or profession?

A. Surveyor, Government surveyor.

Q. And how long have you been such?

A. Well, I have been following the business since I have been in the State, and prior to that in Colorado and New Mexico.

Q. Since about what date? A. '79 or '80.

Q. How old are you at this time?

A. I am fifty.

Q. And you have been employed as a Government surveyor since 1879?

A. Yes, sir. Well, of course, during that time I have worked on railroad work and some private work, and so on, but more or less I have been doing Government work all that time.

Q. And for how long a time did you do that work in the state of Colorado?

A. I was there from '78 to '83, Colorado and New Mexico.

(Deposition of George A. Schwartz.)

Q. What was the character of the country that you were engaged in surveying there, as to its being mountainous or otherwise?

A. Well, most of it was mountains. Some of that on the prairies, some out on the plains, but most in the mountains.

Q. You have been surveying in this state then since 1883? A. Yes, sir.

Q. And what proportion of that time has your work been in the mountains?

A. Why, nine-tenths of it.

Q. Are you the same George A. Schwartz who made the survey of the south and west boundary line of the Yakima Indian Reservation, in 1890?

A. Yes, sir; that is a resurvey of the south boundary, part of the south boundary, forty-seven and a half miles of it.

Q. And a survey of the west boundary line?

A. Yes, sir.

Q. As there located by you? A. Yes, sir.

Q. And that survey was made under contract with the United States Government, was it?

Mr. AVERY.—That is objected to as not the best evidence.

A. Yes, sir.

Q. Did you have any written instructions from any officer for the making of this survey?

A. Yes, sir.

Q. From whom?

A. Thomas H. Cavanaugh, who was then the Surveyor General.

(Deposition of George A. Schwartz.)

Q. Of the State of Washington?

A. The State of Washington.

Q. Have you those written instructions at this time?

A. Well, I don't know that I have. I had them a while ago.

Q. You made some search for your original papers in this matter before coming over, did you not?

A. Yes, sir, I looked for them.

Q. Were you able to find them?

A. I was not able to run across them. I found a lot of others from my work.

Q. I show you what purports to be a certified copy of a letter of the Surveyor General to George A. Schwartz dated June 20, 1890, and will ask you if that is a copy of the instructions under which you made your survey?

A. Yes, sir, that is. I recognize the points in that as what was necessary to be done on the line.

Q. And the instructions therein contained are the instructions received and used by you in making the survey, are they?

A. Oh, yes, sir, and the description of the markings, the markings on the posts and stones. That was what I had.

Mr. LEE.—We offer the certified copy of the letter referred to in evidence as a part of the deposition of this witness.

Certified copy of letter is marked Schwartz Exhibit "A."

Mr. AVERY.—That is objected to as incompetent,

(Deposition of George A. Schwartz.)

irrelevant and immaterial, but in objecting to the competency of it, I do not mean to say that I object to the authentication of it.

Q. When, if you remember, did you commence your work, Mr. Schwartz?

A. You are referring to this boundary?

Q. Yes, sir.

A. Well, it was immediately after the contract was approved.

Q. Was it on or about the 15th day of September, 1890?

A. Well, sir, it was early in the fall; I know when we arrived there, it was frosty weather and winter was beginning to set in.

Q. And how long or until what date if you remember did you engage in that work?

A. Well, I don't remember the date, I couldn't tell that, but it must have been in the neighborhood of two months that we were up there.

Q. Your best judgment is then that it was about two months?

A. Very near that; very near two months.

Q. You made field-notes of your survey, did you?

A. Yes, sir.

Q. And where are those field-notes, if you know, at this time?

A. In the Surveyor General's Office at Olympia, and also in Washington, copies of them.

Q. Have you examined the original field-notes recently?

(Deposition of George A. Schwartz.)

A. I looked over the certified copy of the field-notes.

Q. And you have also examined the original on file in the office of the Surveyor General, have you not? A. Yes, sir.

Q. That was about a week ago when you examined them there with me? A. Yes, sir.

Q. Showing you what purports to be a certified copy of "field-notes of survey of the boundaries of the Yakima Reservation, Washington, from the 47th to the 100th mile-post, with a general description at the end of the notes of said survey as made by George A. Schwartz, U. S. Deputy Surveyor, in the months of September, October and November, 1890, under contract No. 344"; I will ask you if that is a copy of the field-notes referred to by you as having been made by you and now on file in the office of the surveyor general?

A. Well, the general form of the notes is the way I recognize them, and the markings of corners, and so on, and the description correspond.

Mr. AVERY.—Is that certified?

Mr. LEE.—Yes, it is certified. We offer the field-notes and certificate, marked Schwartz Exhibit "B" in evidence as a part of the deposition.

(Certified copy of field-notes marked Schwartz Exhibit "B.")

Mr. AVERY.—I will object to these field-notes because they are contrary to the established and recognized boundaries of the Yakima Indian Reservation, and because they are contrary to the calls of the

(Deposition of George A. Schwartz.)

Yakima Indian Treaty; and because they are contrary to the boundaries of the Yakima Indian Reservation as established by the Act of Congress.

Mr. LEE.—The field-notes in question are the field-notes made by the witness in his work between the 47th mile-post and the 100th mile-post, inclusive, as appears in the Schwartz map of 1890.

Q. Now, after this survey, did you make a map showing the survey as made and according to the field-notes made by you? A. Yes, sir.

Q. I show you a map marked Schwartz Exhibit "C" and I will ask you if that is a correct copy of the map so prepared by you?

A. Yes, sir. That represents it.

Mr. LEE.—We offer Exhibit "C" in evidence, together with the certificate of authentication, and also the letter of Secretary John G. Noble to the Commissioner of the General Land Office, dated May 13th, 1890; letter of Acting Commissioner R. V. Belt to the Honorable Secretary of the Interior, dated May 9th, 1890, and letter of Louis H. Groff, Commissioner, to the U. S. Surveyor General, Olympia, Washington, dated May 20th, 1890, all attached to said plat or map marked Schwartz Exhibit "C," together with the certificate of authentication thereto attached.

Mr. AVERY.—I object to the introduction of Exhibit "C" in evidence, on the ground that it is incompetent, irrelevant and immaterial; because it is not in accordance with the calls of the treaty between the Yakima nation and the Government, and does not correctly describe the Yakima Indian Reservation or

(Deposition of George A. Schwartz.)

its boundaries; and because it is contrary to the established survey of said reservation, and is contrary to the boundaries thereof as established by Congress in 1904, 33 Statutes at Large, 595. I object not generally to the authentication, but to that part which states that it is a survey of a part of the south and west boundaries of the Yakima Indian Reservation, and that it is an official plat of said survey, for the reasons hereinbefore stated; and for the further reason that such statements have no right to be in the authentication certificate.

(Map and certificate attached thereto marked Schwartz Exhibit "C.")

Q. Now, Mr. Schwartz, you commenced your work at what point as the initial point?

A. There was, the initial point was established on the right bank of the Yakima, there.

Q. Did you have field-notes of any other survey furnished you at the time you started this survey?

A. Yes, up to the 47½ mile-post.

Q. And that survey was made by one Harry A. Clark?

A. Harry A. Clark.

Q. And the initial point is shown upon this Exhibit "C" as the Yakima river?

A. Yes, sir.

Q. And the survey is represented on said Exhibit "C" by the black line?

A. Yes, sir.

Q. Now, in making the resurvey, were you able to locate the mile-posts and half mile posts placed there by Harry A. Clark?

A. Well, not all.

Q. But you were able to locate some of them?

A. Oh, yes; still the ridge was too well defined;

(Deposition of George A. Schwartz.)

we couldn't get off of that, but the measurements there, the measurements done there agreed. Then the posts were destroyed through there; it was the old survey—well, that had not been done but a few years before that.

Q. Do you know when that survey was made or when it was purported to have been made?

A. Well, I think in '86 or '87.

Q. 1886? A. Yes, sir.

Q. Now, were you able, in resurveying this south line, the boundary of the reservation, to follow the line as previously made and marked by Harry A. Clark in 1886? A. Yes, sir.

Q. And you did so up to what point?

A. The 47½ mile-post.

Q. From the 47½ mile-post you surveyed in a general westerly course to what point?

A. Well, in a generally northwesterly course throughout.

Q. Well, I mean just before coming to the 47½, westerly to what point?

A. Well, to the 51 mile.

Q. To the 51 mile-post? A. Yes, sir.

Q. Now, from that point on you may state generally what you did and how you determined the course of your survey, and the establishing of this west line of the reservation?

A. Well, I, as I said before, I received the copy—I think I said that before—I received the copy of the treaty.

Q. You had a copy of the Treaty with you?

(Deposition of George A. Schwartz.)

A. Yes, sir, Mr. Cowles, the then Chief Clerk, he copied it for me, he gave it to me so as to guide me in a measure, and when I got down in there I saw the agent and the whites that I met, and the Indians, which I was instructed to talk with them all, to get all the information I could regarding the line. And from here (indicating 51 mile-post) my understanding—and construing the Treaty the way I did—was that it followed from the Atanum, the head of the Atanum there, going on the divide, from then it was a continuous ridge down, continuous—

Mr. AVERY.—I move to strike out what his understanding was; it is a conclusion and not the best evidence and purely hearsay.

Q. Now, Mr. Schwartz, at the 51 mile-post on your survey you turned quite sharply to the north?

A. Yes, sir.

Q. What is the fact as to there being a well-defined ridge or divide between the waters of the different streams along the line extending north from that corner?

A. It is the summit of the ridge, the summit.

Q. Between the waters of what streams?

A. The waters of Satas and streams flowing westerly into the Klickitat, it is the watershed.

Q. The watershed between the Satas and the Klickitat?

A. Yes, sir.

Q. What is the fact as to the waters, some of those waters flowing into the Columbia, direct, do you know?

A. No, I don't think they do. There is a ridge

(Deposition of George A. Schwartz.)

here in the southwesterly direction and these streams flow westerly. I think they call this Cedar Valley (indicating on Exhibit "C").

Q. You mean from the point a little south of the 51 mile-post? A. Yes, sir.

Q. There is a ridge or spur indicated on your map? A. Yes, sir.

Q. And that extends on further west, does it, than is indicated on the map?

A. Yes, in a southwesterly direction.

Q. And do you know where that ridge terminates? A. At the Big Klickitat.

Q. And is there a hill or mountain known as Grayback in that termination?

A. Yes, sir, that would be about the end of it.

Q. Now, that ridge forms a divide between the waters of what streams?

A. Of those flowing into the Klickitat and into the Columbia.

Q. Or possibly branches of the Klickitat?

A. Yes, sir, on the south side they could run and if I am not mistaken in the direction of Goldendale, all in there flow westerly.

Q. Does it in any sense form the watershed of the waters flowing into the Satas river?

A. No, it cannot possibly.

Q. Now, following on north from 51 mile corner you come to Stagman Butte, at about 55½ mile corner, as indicated? A. Yes, sir.

Q. Do you recall the character of the ridge along

(Deposition of George A. Schwartz.)

that line as to whether it is clearly defined and well marked or not?

A. Oh, it is all well defined there throughout there.

Q. Passing on upward to a point where the military road as indicated crosses the line of your survey, is all of that upon the main watershed between the Satas and the waters of the Klickitat?

A. Yes, sir.

Q. And from the military road northward to the two high points, indicated as buttes, is that also in the Satas and Klickitat watershed?

A. No, that would go into the Toppinish.

Q. The Toppinish or Pisco as it is represented on the map? A. Yes, sir.

Q. And from about the 65 mile corner northward the ridge is all of that character, as to its being clearly marked and defined?

A. Well, it has rather precipitous sides and the water—it is a clear and distinct division of the waters of the streams flowing into the Toppenish and also the Klickitat.

Q. And how far up on the line is that true, or, in other words, indicate at what mile corner the waters of the Toppinish or Pisco are to be found, at the most northerly point?

A. Well, up to the 89th mile there—no, the 91st mile, here (indicating on Exhibit "C"), this flows down here and that comes in there and then over there (indicating on exhibit).

Q. From there on northward the ridge is the di-

(Deposition of George A. Schwartz.)

vide between what streams?

A. Well, it still is—the drainage that way would go into the Toppinish and Simcoe.

Q. The Simcoe is a branch of the Toppinish?

A. Yes. And to the westward is the Klickitat.

Q. At what point on the boundary indicated by mile corners did you find the head waters of Atanum Creek?

A. The south fork of the Atanum is about the 100 mile, as near as I remember.

Q. And from there onward you followed the south boundary of the Atanum Creek?

A. Yes, sir.

Q. Down to the 105th mile of your survey?

A. Yes, sir. That was the southern boundary of it. There I tied on to the existing Government surveys.

Q. What is the fact as to your having found section corners and other monuments of Government surveys on different parts of this western line as surveyed by you?

A. Well, where there are indicated there I found them and tied on to such.

Q. That is the initial "S" with the figures following, "25," and "30" means sections in the Government survey?

A. Oh, these 25 and 30 they would be the township lines, yes.

Q. Then, from about mile corner 79 northward much of the way you did find the section corners of previous surveys, more or less?

(Deposition of George A. Schwartz.)

A. Well, yes, sir, up to the 86th mile, you might say.

Q. And then at the end of your survey?

A. Yes, sir, at the end I tied on to the survey there.

Q. What is the fact, Mr. Schwartz, as to your being able to see and observe the general character of the country surrounding this line and the topography of the country generally from the different points along the line you surveyed?

A. How do you mean by that, in order to come to my conclusion where the line was?

Q. I just wanted to know the fact as to whether you could see for instance, Mt. Adams and Goat Rocks and other points?

A. Oh, yes, at various places along the line. It is very high here.

Q. That is about mile-post 51?

A. Yes, sir, it is quite high.

Q. Has that any designation by name?

A. No, only the Simcoe mountains. It is what is called the Simcoe mountains or Satas mountains.

Q. Satas mountains? A. Yes, sir.

Q. From what point to what point?

A. Well, here, the whole stretch is called the Satas mountains, here (indicating on Exhibit "C").

Q. From where to where?

A. Well, you might say—well, from this point, where this line strikes the ridge (indicating on map).

Q. Give the mile-post.

A. That would be the 10th mile.

(Deposition of George A. Schwartz.)

Q. To what point?

A. On to about the 60th mile.

Q. And is there any mountain peak or high mountain about the 51st mile?

A. This is sharp, several sharp points sticking up there.

Q. Were you able to observe Grayback Peak, Goat Rocks, Mt. Adams and other high points from that point?

A. Yes, sir. Well, I don't remember Goat Rocks by having that name at that time. Anyway Mt. Adams is very distinct here.

Q. Now, were you able also to get a view of the valleys from that point?

A. Oh, yes, sir.

Q. Now, from what other points were you able to make observations of this character?

A. Well, in going northward from this point, after we left this ridge, say Potato Butte here (indicating on map), then one could not look out very well across here owing to the timber. It is very heavy timber, but as soon as you get up here to the 69 mile or 68, over there it gets higher until you get up to Signal Peak, in that neighborhood. Over there it is very high then, through the Simcoe mountains, it is called the Simcoe mountains.

Q. And from that ridge on the line of your survey were you able to observe the valleys?

A. Yes, sir.

Q. And mountains on either side?

A. Yes, sir, except where dense second growth

(Deposition of George A. Schwartz.)

would interfere here and there, in places you know.

Q. Yes, sir.

A. The elevation was such as to permit of it anyway.

Q. Calling your attention to the point where you first came to the Atanum river or the southern tributary of the Atanum, describe the character of the ridge at that point?

A. Well, the mountain ridge is well defined there, and the streams, the Atanum, the south fork of the Atanum and a stream flowing into the Klickitat forming a small saddle there. From there the main ridge bears in a northwesterly direction, connecting with the Cascade mountains.

Q. And in the other direction which way does it bear?

A. Spurs bear off to the eastward and northeastward, one northeast.

Q. And to the southward what is the character of the ridge along the line of your survey?

A. Very precipitous sides.

Q. A narrow, sharp, well marked ridge, is it?

A. Yes, sir. Oh, it might be 100 or 200 feet wide in places. Some places more and others narrower. That is merely the backbone.

Q. Had you any instrument or other means of determining the altitude?

A. No, sir, I did not.

Q. You did not carry an aneroid?

A. No, sir, I did not.

Q. Calling your attention to the Mt. Adams quad-

(Deposition of George A. Schwartz.)

range, admitted in evidence, and upon which appears the initials "A. H. S." (meaning A. H. Sylvester), I will ask you to examine the blue line purporting to have been marked there by Mr. Sylvester, and compare it with the line indicated by you on Exhibit "C," and I will ask you if that is substantially correct as a portion of the line surveyed by you, and if so, approximately what portion of the line?

A. Yes, sir, it is, yes, we agree very closely. These dotted lines here are trails (indicating). This shows how precipitous that is. The contours are very close. It is very steep. Here it is more broken and open (indicating).

Q. Where the contours are steep the lines are very close together? A. Yes, sir.

Q. Mr. Schwartz, you have been down into the reservation to the east from the line of this survey?

A. Yes, sir.

Q. I will ask you to describe the appearance of this ridge or range of mountains along which your survey runs, as viewed from the country to the east, or the valley to the east, which I would designate as the valley of the Yakima.

A. Well, looking up towards Ft. Simeoe from the Yakima river, or you might say from the middle of the reservation there, one would take that to be the main ridge of the Cascade Mountains if they did not know, because it is very high.

Mr. AVERY.—I move to strike that out as a conclusion and not competent evidence.

Q. That is the appearance, is it, that it is the

(Deposition of George A. Schwartz.)

main ridge or range of the Cascade Mountains?

A. Yes, sir, it has that appearance.

Mr. AVERY.—I make the same motion in regard to that.

Q. Now, standing upon the range near the head of the Atanum river, looking westward, it is possible to see Mt. Adams and the point designated as Goat Rocks and other high points, is it?

A. Yes, sir. Mt. Adams and the high points are visible from there.

Q. I think in Mr. Barnard's deposition he states that from this point, or a point very near here, a very good view of all of this country is to be had, is that true? A. Yes, sir.

Q. Now, referring to that portion of the country lying between Goat Rocks and Mt. Adams, what is its appearance as to being a plateau, or a sharp, well-defined range of mountains, if you know?

A. Well, I could only speak about that from what I could see from the Simcoe range where I was.

Q. Yes, sir. A. Or Simcoe Mountains.

Q. Yes, sir.

A. Why, it apparently has about the same elevation, and seems to be broken with spurs. There seemed to be no clearly defined ridge.

Q. Then, standing at that point, does or does not the Simcoe range followed by you appear to be the main ridge of the Cascade mountains?

Mr. AVERY.—Objected to as incompetent, not the best evidence, the witness is not qualified to speak on that subject, and it is also a conclusion.

(Deposition of George A. Schwartz.)

A. Well, it is as I said before, by viewing it from the valley of the Yakima it appears from there to be the main range of the Cascades.

Q. And is there anything when you get upon the top of the mountains that would necessarily show any other ridge to be the main ridge, or might it be mistaken for the main ridge, conceding that this is not the main ridge?

A. That is the only way that I could conceive of what it might be considered for. Undoubtedly the main ridge is west.

Q. How near the top of the ridge does the Atanum have its source?

A. Oh, close by, very close.

Q. How many chains? A. It is springs—

Q. How many chains would you say?

A. Oh, if I remember rightly ten or twenty chains, or a quarter of a mile.

Q. And upon the other side of the ridge, as I understand you, there is a branch of the Klickitat?

A. Yes, sir.

Q. Also coming almost to the top?

A. Yes, sir.

Q. And the head waters of the two are about twenty or thirty chains apart?

A. Yes, sir, and they form a gap in the main ridge.

Q. Which you designated as a saddle?

A. As a saddle? Yes.

Q. What was the appearance of the country along the line of your survey, as to whether or not it had

(Deposition of George A. Schwartz.)

been pastured recently?

Mr. AVERY.—Objected to as immaterial.

A. Yes, sir; there were sheep there.

Q. And upon which side of the line as surveyed by you?

A. Why they were just on the outside.

Q. That is on what you designated as public land?

A. Yes, sir.

Q. In marking your stakes and making the survey?

A. Yes, sir. They were near the corral that is marked there "Swamp Corral," well, here in this country, right in here (indicating).

Q. In the Swamp Corral country?

A. Yes, sir.

Q. This point you refer to as a sheep corral is the line you refer to in your notes, as the line passing through there about 100 feet in diameter?

A. Yes, sir.

Q. You have indicated in your field-notes that you found numerous trails crossing the line of your survey? Are these indicated in any manner on your map? A. Well, they should be.

Q. Calling your attention to the dotted lines, crossing the line of survey, does that mark the trails?

A. Yes, sir, the trails.

Q. How were these trails marked, as to there being any blazes on the trees?

A. But very few of them, very few.

Q. Did you find any blazed trails?

A. Not in there; I don't think I saw one when

(Deposition of George A. Schwartz.)

I was up there.

Q. Indians, then; in making trails do not, as a rule, blaze them? A. Oh, no, they don't.

Q. What is the fact as to your finding blazes on trees throughout this section—did you find some?

A. Some, yes, some chopping along in places on the main ridge, but what was intended by it I don't know.

Q. That was more or less all along the line of your survey? A. Yes, sir.

Q. What is the fact as to your having gone down the ridge toward Grayback Peak from mile-post 51?

A. I did not consider that at all because it terminates in Klickitat river and I understood, or my understanding of the Treaty and my reading of the Treaty was that it followed a continuous ridge from the head of the Atanum.

Mr. AVERY.—I move to strike out what he states his understanding was, on the ground that it is not competent.

Q. What is the fact, Mr. Schwartz, as to the tract of land constituting the Yakima Indian Reservation as bounded on the East by the Yakima river, on the north by the Atanum, and on the west and south by the line surveyed by you, being a tract entirely enclosed by natural barriers of either mountain ranges or streams?

Mr. AVERY.—I object to that as incompetent, irrelevant and immaterial, and calling for a conclusion.

A. Well, I considered that was the meaning of the Treaty, that it called for the natural boundary of

(Deposition of George A. Schwartz.)

the Yakima and Atanum rivers, they being the natural boundaries, and on the west and south mountain ridges, that their shapes, formed there—

Q. Natural boundaries?

A. Natural boundaries.

Mr. AVERY.—I move to strike out that answer for the same reasons.

Q. In your investigation of the subject on the ground is there any other place to run the line of the west boundary of the survey than the one selected by you, which would conform to the calls of the Treaty?

Mr. AVERY.—I object to that on the ground that it calls for the conclusion and opinion of the witness, and his conclusion and opinion as to the calls of the Treaty.

A. No, sir.

Q. I will ask you why you make that answer, Mr. Schwartz; give your reasons.

Mr. AVERY.—I object to that as calling for the conclusion of the witness as to the boundary of the reservation, and also as to the calls of the Treaty and is not evidence.

A. Well, I answered that by saying that in my instructions from the Surveyor General I was to interpret that Treaty and settle that, and make it a matter of fact.

Mr. AVERY.—I object to that, as the letters of instruction state for themselves what his instructions were, and his statement of those instructions is not the best evidence.

(Deposition of George A. Schwartz.)

A. It is a continuous ridge; I followed a continuous ridge separating the waters of the Klickitat and those flowing into the Columbia, and those flowing into the Yakima, or Satas or Toppenish and Pisco. It is a continuous ridge.

Q. To reach the summit of the Cascade Mountains as you now find it to be would it be necessary to cross the Klickitat river?

A. As the boundary is, the recent boundary they have?

Q. Yes, sir.

A. Oh, yes, sir; you cross the Klickitat river from Grayback Peak.

Cross-examination.

(By Mr. A. G. AVERY.)

Q. I understood you to say, Mr. Schwartz, that commencing at a place designated as 7 M. C., meaning seven-mile corner, westerly and southerly, or down to 51 mile-post, or mile corner, there is a well defined ridge?

A. Well, it is about, I think it is near the tenth mile, probably; yes, it is a well-defined ridge all the way.

Q. Then, that ridge also extends westerly, that continues beyond the 51 mile corner westerly, and bearing south somewhat to Grayback Peak, doesn't it?

A. Well, there is a spur that way, but it is a subdivision of this, a sub-ridge.

Q. Well, then, you refuse to call the mountains running north from 51 mile-post a spur?

(Deposition of George A. Schwartz.)

A. Yes, sir.

Q. But you call the mountain running west and southerly from 51 mile-post a spur?

A. Yes, sir; I consider that a spur.

Q. It has evidently passed across the Klickitat river at some time, this last spur I speak of, hasn't it?

A. Well, that I don't know; it is barely possible that it might have.

Q. Hasn't the Klickitat river apparently cut through that spur as you term it?

A. Well, now, to view it from up there, that is a great valley, it is wide and deep, and the further south you look, say you are standing up on this point here, you know, and this is high—

Q. Indicate what point.

A. 51 mile, up on that high point that is all lower country, you are looking down a great valley in there. Grayback Peak is a round knob that stands on the edge of this ridge that runs in a southwesterly direction, and west of that is the Klickitat river.

Q. Well, now across, approximately across the river from Grayback, across the Klickitat river from Grayback, the ridge continues, doesn't it?

A. Well, there are a number of spurs that come down from the main ridge, from Adams and those higher mountains there.

Q. There appears to come down to that point on the Klickitat approximately opposite to Grayback a range or spur from the Cascades, starting approximately at Mt. Adams or a little east of it?

(Deposition of George A. Schwartz.)

A. Well, I noticed a number of ridges coming down there, but they were low ridges, natural divisions between streams.

Q. They were watersheds, were they not?

A. Oh, yes.

Q. Now, going north from mile-post 51, you have based your conclusions very largely, if not entirely, on the fact that the ridge which you surveyed was a watershed?

A. Yes, sir, it is.

Q. You say, I believe, that the southern boundary of the reservation as surveyed by you, shown on your map here—and it is in connection with that map that I have asked the questions that I have heretofore—there is a mountain or high ridges running from mile-post 51 northerly to a point about as indicated on the map as 58 mile-post?

A. Yes, sir, in that neighborhood.

Q. It is about as indicated on the map here?

A. Yes, sir, as it is shown.

Q. It tapers off from the south going north to 58 mile-post, doesn't it?

A. Yes, to the divide, it makes a sort of a divide or gap, a broad gap.

Q. Now, these mountains that I have just referred to are called, you understood, what?

A. Satas.

Q. Satas mountains?

A. Satas mountains.

Q. Then between mile-post 58 and up and between 64 and 65 this mountain forms what you call a saddle, is that it?

(Deposition of George A. Schwartz.)

A. What would be a kind of a saddle, and I must say here now that through there on part of it there are openings, the timber is off and it was difficult for me to determine the exact watershed, but I found it by noting the grass and the stuff that flowed in these streams—they were dry when I was there—but you could see the direction it was, you could see by the angles made here, and in that way I had to follow the summit—they indicated the exact ridge as near as I could follow it.

Q. Then, I take it from 58 up to between 64 and 65 it is not very well defined?

A. Well, you cannot go any distance away but what then it would be, because then it drops off then.

Q. Is the Simcoe Valley immediately east of your west survey?

A. Yes, sir, this is on the Simcoe mountain here, this is the valley down here (indicating), and this is Adams (indicating). Now, here is the Satas. This branch comes in here and the Toppinish comes right on alongside here, they both run into the Yakima river, just about like that (indicating on map), very close together, and the Simcoe runs out down into the Toppinish.

Q. They both flow in a general eastern direction?

A. Yes, sir.

Q. Where do the Simcoe mountains commence?

A. Well, that, I would consider them practically beginning here at the 64, or along in there, because the water flows down into the Toppinish or Piscoe river; then from there on they were called the Sim-

(Deposition of George A. Schwartz.)

coe mountains. Then there is a ridge extends out here between the Satas and the Toppinish (indicating on map). That makes the division.

Q. Now, I understand you to say that from a point approximately at 54 or 55 mile-post easterly there is a ridge or watershed?

A. Yes, sir, that is the division between the Toppinish and the Satas river.

Q. Is that a pretty well-defined range?

A. Oh, yes.

Q. That is a well-defined ridge, is it?

A. Yes, sir.

Q. Are there any more ridges well-defined running east from your west survey? A. None.

Q. Or the west line of the survey as you have surveyed it?

A. No, sir, except on the north side, one between the Simcoe and the Atanum.

Q. There is one then running between the Simcoe and the Atanum, easterly from the Simcoe mountains. Is that a well-defined ridge?

A. Yes, sir.

Q. Now, you stated that standing east of the Simcoe Mountains it looked as if that was the main ridge of the Cascades. Did you say that?

A. Yes, sir.

Q. The reason you say that is, I suppose, because you could not see beyond there, could you?

A. You could not see beyond there, they are too high.

Q. And you do not know anything about what

(Deposition of George A. Schwartz.)

was beyond there, by standing there?

A. Well, I wish to correct that part in this way; I knew myself that the Cascade range was beyond that.

Q. Yes, sir.

A. But in construing the Treaty, there is where my instructions were to define that boundary.

Mr. AVERY.—I shall object to what your instructions were except as contained in your letter.

Q. You say that that was what gave you the impression that that was the main ridge of the Cascades, was because you could not see beyond it?

A. Yes, sir, being so high you know.

Q. You knew when you surveyed it that it was not the main ridge of the Cascade Mountains, did you?

A. Yes, sir; I found it out when I got on top there.

Q. Now, when you surveyed this, did you know before you surveyed it whether it was the main ridge or not, or did you discover it when you were surveying it?

A. Well, I discovered from there was—that it could not be the main ridge of the mountains (indicating on map).

Q. That is from mile-post 51?

A. Yes, sir.

Q. Then, when you were up on this ridge over here, your west boundary as surveyed, you could see plainly, could you not, that the main ridge of mountains, of the Cascade mountains, was on the other

(Deposition of George A. Schwartz.)

side of the Klickitat? A. Yes, sir.

Q. And you so reported that in your report?

A. In my reports.

Q. Did your report contain the statement that "the land in dispute is from the fifty-first mile onward in a northerly direction. The Indians claim that the line passes along the top of a low ridge of hills bearing in a southwesterly direction, and terminates at the Big Klickitat river, and that this should be a continuation of their southern boundary. Upon the western end of said ridge there is a round hill called Grayback mountain"?

A. Yes, sir.

Q. And also the following: "Thence it is claimed by the Indians the line bears in a northwesterly direction crossing the Klickitat river to the base of Mt. Adams"? A. Yes, sir.

Q. Mr. Schwartz, you say that you have been doing work for the Government since 1879, or '83, did you say?

A. Well, in this State, or territory then, since '83.

Q. What do you mean by that, you were not occupying any official position except you were U. S. Deputy Mineral Surveyor?

A. No, Deputy Surveyor, U. S. Deputy Surveyor. We do contract work.

Q. Wasn't you called Deputy U. S. Mineral Surveyor?

A. No, sir, that is a separate thing.

Q. You make bids for Government work, don't you?

(Deposition of George A. Schwartz.)

A. Yes, sir; for townships and subdividing, etc.

Q. And all that is let out, isn't it, by contract to different people who bid on the work?

A. Yes, sir.

Q. And they don't have anyone especially designated or appointed to do that work, except those who bid successfully on it?

A. Well, no; it is only through the Surveyor General; it is under his discretion.

Q. He lets the contracts?

A. He lets the contracts.

Q. And except when you are performing those contracts you are not a deputy surveyor?

A. No, not when you are not doing the contracts.

Q. Now, you said that you had a copy of the Yakima Indian Treaty before you when you were making this survey?

A. Yes, sir, a small written copy. Mr. Cowles copied it for me. He had it from the records there, and he gave me a copy of it. Mr. Cowles was the chief clerk at the time, of the surveyor general.

Q. Did that copy of the treaty contain what purported to be the calls for this reservation?

A. The description of the boundaries?

Q. Yes, sir. A. Oh, yes.

Q. Did it say: "Commencing on the Yakima river at the mouth of the Atanum river, thence westerly along said Atanum river to the forks, thence along the southern tributary to the Cascade mountains"? A. Yes, sir.

Q. Did it say: "Thence southerly along the

(Deposition of George A. Schwartz.)

main ridge of said mountains, passing south and east of Mt. Adams to the spur whence flows the waters of the Klickitat and Pisco rivers"?

A. Yes, sir.

Q. "Thence down said spur," does it say also, "thence down said spur to the divide between the waters of said rivers thence along said divide to the divide separating the waters of the Satas river from those flowing into the Columbia river"?

A. Yes, sir.

Q. "Thence along said divide to the main Yakima, eight miles below the mouth of the Satas river"?

A. Yes, sir.

Q. "Thence up the Yakima river to the place of beginning"?

A. Yes, sir.

Q. You noticed that the western boundary ran southerly along the main ridge of the Cascade mountains, didn't you?

A. Yes, sir.

Q. You did not extend or run your line along the main range of the Cascade mountains?

A. No, because I could not do it without crossing the Klickitat river and the Treaty did not call for that.

Q. Are you very familiar with the country up around there—I mean had you ever been there before?

A. Well, I had been there, yes, but not to go over it like I did then.

Q. Have you been anywheres in this country around the reservation, in its boundaries, except over

(Deposition of George A. Schwartz.)

and about on your survey lines, the line you surveyed?

A. Well, I have been down in this country, more or less (indicating on map).

Mr. AVERY.—He indicates off to the southeast.

A. To the southeast, yes, sir.

Q. Otherwise you are not familiar with it from personal investigation?

A. Oh, no, I had nothing to draw my attention to it particularly.

Q. Calling your attention to the head of the south fork of the Atanum, as shown by your map, you stated that there was a ridge running westerly or northwesterly to the main ridge of the Cascades, did you not?

A. Well, you mean from the head of the Atanum?

Q. Yes, from the head of the Atanum.

A. Yes, sir.

Q. Do you know where Spencer's point is?

A. No, I didn't have that name then.

Q. Now, calling your attention to Plaintiff's Exhibit 1, being the Barnard map, I will ask you if this range of hills or mountains or ridge does not run up around the head of the Klickitat river?

A. Yes.

Q. And thence coming south somewhat after that goes northwesterly to Goat Rocks?

A. To a peak in the Cascade Mountains.

Q. Well, isn't that known as Goat Rocks?

A. Well, at that time I didn't know the name of a lot of those peaks.

(Deposition of George A. Schwartz.)

Q. I see you put it on your map as "Goat Mountain"?

A. Yes, sir, that would be the one, Goat Mountain.

Q. Calling your attention to that part of your west boundary surveyed from 58 mile-post north and west to the Atanum, isn't it a fact that a goodly portion of all that is simply a high ridge or watershed without being a sharp pointed elevation?

A. The only place that would be a few miles from the 59 here to the 64th mile, along in there, that is the only place that is kind of flat.

Q. There don't seem to be on your map a mountain between 64 and 65, except a butte?

A. Well, those are really hills. The field-notes would tell how it follows up and down, ascends and descends.

Q. Well, how about the conditions between 65 and 67, there don't seem to be any mark. That is a saddle again is it?

A. I don't think it would be. I cannot recall the exact points that way now, no more, it is so long ago.

Q. Well, your idea, if I understand you right, is that you did not go on to the west, did not carry your survey around to the main ridge of the Cascade Mountains, because you could not do it without crossing the Klivkitat river?

A. It is, well, it is my understanding according to the Treaty which I am supposed to follow.

Q. I understand you to say on your examination that your reason was because you could not do it

(Deposition of George A. Schwartz.)

without crossing the Klickitat river?

A. Because I did not believe that the Treaty called for it to go across the river. I thought it was a continuous ridge.

Q. Although it did not say that, the Treaty don't say that?

A. I don't say that in so many words, but it was my construction that I placed on it.

Redirect Examination.

(By Mr. E. J. CANNON.)

Q. I want to call your attention to the map which will be marked "Schwartz Exhibit 'B'" for identification—I will not offer it in evidence at this time—and I ask you to mark there with your initial "S," the 51st mile-post?

A. Yes, sir. That is about where it is (indicating on map).

Q. Now, in what direction is Goat Rock from that point?

A. Well, that would be northwest. It would be up in here somewhere (indicating).

Q. About directly northwest?

A. Yes, just about northwest—

Q. Now, what direction is Grayback Peak?

A. Oh, it is southeast of Goat Rock.

Q. Now, in what direction is Grayback Peak?

A. Well, as near as I remember it, it is in a south-westerly direction from that, the divide is shown in here between these streams.

Q. As I mark it in black pencil?

A. Yes, it would be about here (indicating). I

(Deposition of George A. Schwartz.)

think that broken line there would indicate where we offset around it.

Q. Now, is that ridge well defined across the Klickitat?

A. That I don't remember so much about. They were so many little ridges coming down from the big mountain that no one of the ridges between the streams would be more or less clearly defined among any of them.

Q. Were any of them as clearly defined as the ridge north from mile-post 51?

A. Not to my view.

Q. How far north does the Klickitat extend, does it extend northerly of the north boundary of the survey?

A. Some distance.

Q. Some distance?

A. Yes, sir, of my survey.

Q. As a matter of fact, does it extend northerly of the north fork of the Atanum?

A. Well, now, the north fork of the Atanum, I didn't know where that was. I had no reason to go up there to find out, and from there you cannot see those. I could not see it from there.

Q. Taking a line westerly from the north line of the reservation, as admitted to be correct by all, state whether or not the Cascade Mountains is a narrow or a broad and scattering ridge of mountains?

A. As a rule it is quite broad and scattering over there, and broken.

Q. Broken? A. Yes, sir.

(Deposition of George A. Schwartz.)

Q. Is there any defined ridge from Mt. Adams southeasterly?

A. Yes, there is a ridge comes down off of there that is very steep. I suppose that is where this "Hump" is?

Q. Down to the Hump.

A. Yes, I suppose that is it.

Q. Where is the Hump—is it on Mt. Adams?

A. Down on the base of it like; there is a ridge that extends out from it. It is clearly defined.

Q. Is there any other ridge between the Klickitat and the Satas rivers except this ridge down which you came with your survey?

A. Between the Klickitat and the Satas rivers?

Q. Yes, sir. A. None.

Q. Is there any between the Klickitat and the Pisco? A. No, sir. No other ridge you mean?

Q. Yes, sir. A. There is no other ridge.

Recross-examination.

(By Mr. A. G. AVERY.)

Q. You spoke about the well-defined main ridge of the Cascade Mountains and spoke about its being somewhat scattered at the point opposite to the mouth of the Atanum west? A. Yes, west.

Q. It is a fact, isn't it, that there is a well-defined watershed there?

A. Oh, yes, with all the streams flowing west and east, but it is broken when you view it from a distance, it would seem like you could not say whether that is a distinct line as in that ridge. Of course; I knew it was winding around. I did not go over it.

(Deposition of George A. Schwartz.)

Q. But when you are on the main line of the Cascade Mountains there is a well-defined watershed, a well-defined center, of the range?

A. Oh, yes, when you get out that way you find that as a rule, although I didn't go over there.

Q. You did not make a personal examination of it?

A. No, I didn't go over there.

Q. Now, did I understand you to say that there was a sort of a ridge or spur running from Mt. Adams or from the Hump sort of southeasterly?

A. Yes, I think that is what I said.

Q. Well, I mean in my examination; southeast?

A. Well, in an easterly or southeasterly direction.

Q. Yes, sir.

A. Yes, there is one there that way, but then as I say there is a number of those between every two streams, there would be a sharp ridge a short distance. When you view them like from the top of this high mountain there, they are pretty clearly defined.

Q. When you say the ridge running from mile-post 51 down to Grayback and the river Klickitat, when you say that that is not as well-defined as the ridge which runs north from 51 mile-post, and which you surveyed, you don't mean to say that you made any such examination of the first ridge as you did the last one I speak of?

A. Oh, no. The other one goes into a lower country.

Q. And you look somewhat down on it?

A. Yes, sir.

Q. And its definiteness was not quite so apparent

(Deposition of George A. Schwartz.)

as if you had been over there?

A. Well, it is a clearly defined ridge as far as that is concerned.

By Mr. CANNON.—From Mt. Adams there are ridges down the mountain sides in all directions?

A. In all directions.

Q. Almost like the branches of a tree reversed?

A. Yes, sir.

Q. And this represents really a part of Mt. Adams itself? A. Yes, sir, it forms the base.

Q. And then streams flow down the mountain sides in different directions? A. Yes, sir.

Q. Now, is the Hump a part also of Mt. Adams as you have designated?

A. Yes, sir, as I remember.

Q. And these ridges extend to the north, and toward the Cascades also, do they not?

A. How is that?

Q. The ridges extending down and out from Mt. Adams extend right in toward the Cascades also, do they not?

A. Well, no, Adams is in the Cascades.

Q. But it is much higher than the surrounding mountains?

A. Oh, yes, but Adams goes away up. I don't know what its elevation is; it must be ten or eleven thousand feet, but Adams is on the main range.

Q. But the water from Mt. Adams all flows down toward the Columbia, doesn't it?

A. Well, the Cispus,—yes, sir. I guess it would. Of course I never was over in here; to White Sal-

(Deposition of George A. Schwartz.)

mon. Evidently all of it from around here, (indicating). The question is, then, where the Cascades continue, where the main divide of it would cross the Columbia.

Q. Well, do you know where the main divide crosses the Columbia?

A. I don't know where it does, because that river cuts the whole mountain and one could not say which line would be a continuation of the Cascades.

Witness excused.

Stipulation [Re Plaintiff's Exhibit No. 3].

Document No. 621, certified to on the date of September 15, 1908, and as appears under the cover of that certificate (being Plaintiff's Exhibit 3), is admitted by both parties without objection to be what it purports to be, and to be used by either side as may be deemed advisable, defendants, however, not admitting the correctness of the statements therein contained.

Here an adjournment was taken subject to three days' notice.

Tacoma, Wash., Wednesday, November 4, 1908.

Ten o'clock A. M.

Taking of testimony by the defendants resumed pursuant to adjournment; all parties present, by counsel.

Stipulation [Re Deposition of Jacob E. Noel, Certain Offers in Evidence, etc.].

It is stipulated by and between counsel for the plaintiff and the defendants that the deposition of Jacob E. Noel may be taken at the office of the Divi-

sion Counsel of the Northern Pacific Railway Company, in the Northern Pacific Headquarters Building at Tacoma, Washington, on this 4th day of November, 1908, commencing at ten o'clock A. M., before John H. Pelletier, Esq., Examiner, notice of the time of taking of said deposition being waived; and it is stipulated that the testimony of said witness, when transcribed by the Examiner, need not be signed by said witness, his signature being waived.

Mr. LEE.—For the purpose of completing the record as to exhibits the defendants at this time offer map marked Schwartz's Exhibit "D" for identification, of September 24th, 1908, the same being a map of the State of Washington, purporting to have been published under authority of the General Land Office in 1891; together with the certificate of authentication.

Mr. AVERY.—We specifically object to the introduction of that map on the ground that the same is incompetent, irrelevant and immaterial, and particularly because the portion thereon which purports to indicate the shape, place and area of the Yakima Indian Reservation is erroneous, in that it does not show said reservation to be in accordance with the Treaty between the United States and the Yakima and other nations, known as the Yakima Treaty, being the same Treaty referred to in the bill of complaint herein, and said reservation, as shown on said map, does not extend to the Cascade Mountains; and because the same is not in accordance with said reservation, as fixed by the Act of Congress Dec. 21, 1904 (33 Stat., 595).

Mr. LEE.—Mark this for identification.

(Paper marked Defendants' Exhibit "E.")

Mr. LEE.—The defendants offer the paper marked Defendants' Exhibit "E," the same being copy of letter of R. V. Belt, Acting Commissioner of Indian Affairs, to the Honorable Secretary of the Interior, dated May 9, 1890, together with the certificate of authentication thereto attached, dated March 7, 1907.

Mr. AVERY.—I object to the admission of this purported Exhibit "E" on the ground that it is incompetent, irrelevant and immaterial. It seems to be a portion of correspondence on a transaction and not the whole thereof, and it cannot be understood, nor is it competent unless the matters and things and communications therein referred to are also offered in connection with it; and also because the boundaries of the Yakima Indian Reservation are fixed and declared by the Yakima Indian Treaty referred to in the bill of complaint and in the Act of Congress Dec. 21, 1904 (33 Stat., 595), and cannot be disturbed or changed by this communication or any other.

Mr. LEE.—Mark this for identification.

(Paper marked Defendants' Exhibit "F.")

Mr. LEE.—The defendants offer paper marked Defendant's Exhibit "F," the same being a purported copy of letter from Thomas Priestly, United States Indian Agent, to Honorable J. T. Morgan, Commissioner of Indian Affairs, dated December 3, 1898; also paper marked Defendants' Exhibit "G," purporting to be a copy of letter from Thomas Priestly, United States Indian Agent, to Honorable J. T. Morgan, Commissioner of Indian Affairs, dated

March 22, 1890, together with blue-print copy of map thereto attached, together with certificate of authentication of these two exhibits.

Mr. AVERY.—I make the same objections to these two exhibits as I did to the last exhibit offered.

Mr. LEE.—Mark this for identification.

(Paper marked Defendants' Exhibit "H.")

Mr. LEE.—The defendants offer Exhibit "H" in evidence, the same being a purported copy of report of Jacob E. Noel, Examiner, to the United States Surveyor General, Thomas H. Cavanaugh, dated August 15, 1891, together with certificate of authentication.

Mr. AVERY.—I object to the introduction of this Exhibit "H" on the ground that it is attempted therein to change the boundary lines of the Yakima Indian Reservation from the boundary lines provided for in the Yakima Treaty and by the Act of Congress, Dec. 21, 1904 (33 Stat., 595); and also because the said exhibit contains conclusions, and is not binding on the complainant herein, nor is it binding on its Indian wards, for whom the Yakima Treaty was made, and is not binding on the Indian wards of the Government who occupied, or have a right to occupy the Yakima Indian Reservation, nor does it bind those Indian wards of the Government, who own, subject to Governmental control, the Yakima Indian Reservation.

Mr. LEE.—Defendants offer in evidence paper marked Defendants' Exhibit "I," the same being a purported copy of letter from Thomas H. Carter, Commissioner, to the United States Surveyor Gen-

eral, Olympia, Washington, dated October 1, 1891, together with the certificate of authentication.

Mr. AVERY.—Complainant objects to the admission of Defendants' Exhibit "I," on the ground that the same is incompetent, irrelevant and immaterial, and cannot change in any respect the boundaries of the Yakima Indian Reservation as established by the Treaty and the Act of Congress, Dec. 21, 1904 (33 Stat., 595).

It is understood that the complainant interposes the following additional objection to the Defendants' Exhibits "D," "E," "F," "G" and "I"; that the same are incompetent, irrelevant and immaterial, and no part thereof can bind the United States, nor can any part of said exhibits bind or conclude the Indian wards of the United States in whose behalf this action is brought, who are occupants, or entitled to occupy or live upon the Yakima Indian Reservation, or who own the same or any part thereof, either entirely or subject to Governmental control.

[Deposition of Jacob E. Noel, for Defendants.]

JACOB E. NOEL, produced as a witness on behalf of the defendants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth herein, and cautioned so to do, testified as follows:

Direct Examination.

(By Mr. A. B. LEE.)

Q. Captain, your full name is Jacob E. Noel?

A. Yes, sir.

Q. And you reside at Tacoma, Washington?

(Deposition of Jacob E. Noel.)

A. I do.

Q. How long have you lived at Tacoma?

A. Since the fall of 1889.

Q. What is your age? A. Sixty-two.

Q. What is your business or profession?

A. Civil engineer.

Q. And what, if any, official position do you hold at this time?

A. Only Assistant Engineer of the city.

Q. Of the City of Tacoma?

A. Of the City of Tacoma.

Q. I believe it is a matter of common knowledge that you were yesterday elected County Surveyor?

A. County Engineer of Pierce County.

Q. Without opposition? A. Yes, sir.

Q. What school or schools, if any, are you a graduate of, Captain?

A. I am a star graduate of the United States Naval Academy.

Q. At Annapolis? A. At Annapolis.

Q. Of what year? A. I graduated in 1865.

Q. Did you serve in the navy?

A. I served in the navy until June 30th, 1887, as a regular commissioned officer.

Q. And what was your rank as an officer in the United States Navy at the time of your retirement?

A. Lieutenant Commander.

Q. What training in Civil Engineering did you have in your studies at Annapolis, and in your service in the navy?

A. Well, there is a regular course there in en-

(Deposition of Jacob E. Noel.)

gineering; and also in the Washington Navy Yard, Washington, D. C., and Mare Island and somewhat in the investigation of Pearl Harbor, in the Sandwich Islands, before they belonged to us. They had an idea then of buying a station there, I think. And I was on the preliminary survey of the Nicaraguan Canal.

Q. In what year was you on the survey of the Nicaraguan Canal?

A. That was in '71 and '72, I think.

Q. Since leaving the service have you been continuously engaged in following your profession?

A. I have.

Q. Has that work taken you into the mountainous country of the State of Washington, making surveys of the mountains?

A. Yes, sir. Yes, I am familiar with them.

Q. You have also worked part of the time as Deputy United States Surveyor, I believe?

A. Yes, sir.

Q. How much of the time, can you tell?

A. Well, no; I couldn't tell.

Q. Quite extensively?

A. Yes, I was employed. As long as you are a Deputy Surveyor you are at work. I was up in the Olympia Mountains, in the Queniault reservation there.

Q. In what year were you at that work?

A. I think it was '90, I think.

Q. In 1890? A. Yes, sir.

Q. How extensive was your work there at that time?

(Deposition of Jacob E. Noel.)

A. We were up there about three or four months and we were forced to quit when the snow and rainy season came on.

Q. What was the character of your work there?

A. Well, we was running the township lines and section lines adjacent to the Queniault reservation.

Q. Did that survey involve the boundary of the reservation at all? A. Yes, one side.

Mr. AVERY.—What reservation do you mean?

A. The Queniault. That is away up north of here.

Q. The lines of the boundary of the reservation had been surveyed and marked? A. Yes, sir.

Q. And you surveyed up to these?

A. Yes, sir.

Mr. AVERY.—I think I will object to that as immaterial.

Mr. LEE.—He is simply examined as to that for the purpose of showing his familiarity with that class of surveying.

Q. Showing you Defendants' Exhibit "H," I will ask you if you have examined that?

A. Yes, I have examined that.

Q. And so far as you observe is that a correct copy of the report which it purports to be a certified copy of? A. Yes.

Q. The original report was made by you at the time it bears date? A. Yes, sir.

Q. Now, will you please state what you did in the way of investigating the survey of George A. Schwartz of the south and west boundaries of the

(Deposition of Jacob E. Noel.)

Yakima Indian Reservation, as made by him in the year 1890.

Mr. AVERY.—I object to the question on the ground that the Schwartz survey, or what purports to be the Schwartz survey, is contrary to the treaty calls, and the Act of Dec. 21, 1904 (33 Stat., 595), and therefore the answer is incompetent, irrelevant and immaterial.

A. That is all in my report.

Q. I mean to go more into detail as to the observation you made of it, I think you can answer the question a little more fully perhaps than the report. I don't mean as to how many horses you hired or things of that kind, what I want particularly is your observation, in addition to what you reported, from this point up here to this point (indicating on map) the western boundaries.

Mr. AVERY.—I suggest that you make the record show that he has this exhibit.

Mr. LEE.—For the purpose of the last question the witness is shown map marked Defendants' Exhibit "C."

A. I had a copy of that map.

Q. You had a copy of that map with you at the time you made the check? A. Yes, sir.

Q. Now, starting at mile-post or mile corner fifty-one?

A. Well, the instructions, as I recall them, were to particularly observe, you know, whether this line followed the divide.

Mr. AVERY.—I object to a statement of what the

(Deposition of Jacob E. Noel.)

instructions contained as not being the best evidence of it.

Q. You did investigate the character of the country from mile-post 51 to mile-post one hundred, or thereabouts, did you? A. Yes, sir.

Q. Now, what is the character, what is the topography of the country followed by that line, as to its being a clearly defined and well-marked ridge or succession of mountain ranges?

A. Well, they connect very closely; that is, a well-defined line of watersheds.

Q. What is the fact as to its being high or mountainous?

A. It is high, with reference to the surrounding country, practically the highest ridge in that vicinity, the highest connected ridge, I mean. There are saddles, of course.

Q. Starting at mile corner fifty-one, there is also a ridge running off to the southwest and terminating at the Klickitat river, or near there, in a point called Grayback Peak, is there? A. Yes, sir.

Q. You observed that ridge at the time you were there?

A. Yes, quite plainly. It is in here (indicating on map Exhibit "C").

Q. Now, what, if any, reasons are there for following the line of the Schwartz survey, along this ridge off to Grayback Peak?

A. Well, you would have to cross some of the tributaries of the Klickitat river.

Q. The Klickitat river watershed on the—

(Deposition of Jacob E. Noel.)

A. South and west, and west.

Q. South and west from the line of survey followed by the Schwartz survey? A. Yes, sir.

Q. Is that most plainly and clearly marked and well defined? A. The Klickitat?

Q. No, the division in between the Klickitat and the waters of the Satas and the waters of the Topinish or Pisco?

A. Yes, sir; it is well defined.

Q. What, if any, instruments did you have with you at that time?

A. I had a Buff and a Buff, first class transit, costing about \$310.00, and field-glasses—

Q. Did you have powerful field-glasses with you?

A. I had United States Army field-glasses, first-class United States Army field-glasses, and my instrument was a powerful one. I could read the time of my watch at twelve hundred feet with my instrument; I could see the minute hand and the hour marks; and the transit was one of the best.

Q. Now, did you observe the character of the country on either side and line about the line of the Schwartz survey as you progressed?

A. Yes, sir.

Q. I will ask you if you know the points designated as Signal Peak and Grayback Peak and Goat Mountain, or Goat Rocks?

A. Goat Rocks; yes, sir.

Q. And Mount Adams?

A. And Mount Adams, yes, sir.

Q. Did you observe these various points I have mentioned?

(Deposition of Jacob E. Noel.)

A. I did. They were well-marked points and they would naturally come into the observation of any man who knew his business.

Q. Are you familiar with the point designated as "The Hump" on the east side of Mount Adams?

A. Yes, sir.

Q. Where is that Hump as to its being upon the side of the mountains or below what should be termed as the base of the mountain?

A. That was in a kind of a southeasterly direction from the main peak of the mountain.

Q. From the peak? A. Yes, sir.

Q. But what is the fact as to its being a part of the whole of Mount Adams?

A. Well, I should say that it was a part of Mount Adams, you mean of the ridge?

Q. Upon the westerly slope of the mountain?

A. Westerly and kind of southerly.

Q. Slope of the mountain?

A. Yes, sir. It was; it is a hump kind of sticking out from the mountain aways.

Q. In your best judgment how far from the peak of Mount Adams would the highest part of this Hump be?

A. Well, it is pretty hard to estimate things there, and it was sometime ago that I was there. We were trying to watch it as we went along there and it is pretty hard to estimate it at that distance off.

Q. You did not observe, then, with any degree of care the distance between the points of the two?

A. You mean of the main peak and this hump?

(Deposition of Jacob E. Noel.)

Q. Yes, on a straight line, I mean.

A. No, I did not.

Q. Showing you Plaintiff's Exhibit "2," I will ask you if you can locate on that map, the Mount Adams quadrangle, the location of this so-called hump. I don't think it has been located by anyone. Has it, Mr. Avery?

Mr. AVERY.—Yes, it is located right on there.

Mr. LEE.—Located as Goat Butte.

Mr. AVERY.—Yes, he said it was the identical point that is shown on the other maps as the Hump.

The WITNESS.—That is intended for it there.

Q. Now, what is the fact as to your being able to clearly see and observe the Hump on Mount Adams, Goat Rocks, Spencer's Point, Signal Peak and Gray-back Peak from among the different points on the line examined by you?

A. The opportunities were good. Yes. They are well defined there.

Q. They are clearly seen even with the naked eye there among points of that peak.

A. Yes, and then I used my glasses all over that country when I was out there. It was fine weather and I could see that part of the country very well.

Q. And those are objects that to the naked eye are easily observed?

A. Yes, sir; they are prominent and naturally catch the eye.

Q. Now, coming to the point designated as a saddle, at about mile-post one hundred or one hundred and one—

(Deposition of Jacob E. Noel.)

A. It is near there, one hundred and one. That would make an impression on his mind coming to the mile-post.

Q. That is one-hundred mile-post?

A. One hundred and one, I think it is.

Q. The point where I refer to is where the south tributary of the Atanum has its rise. You locate the point, do you?

A. Oh, yes, that is a well-defined point.

Q. Now, what is the character of the ridge followed by the survey from that point southerly and easterly?

A. That is very precipitous.

Q. High and precipitous?

A. High and precipitous; it jumps off almost off into a canyon.

Mr. AVERY.—I object to counsel leading the witness.

Q. Now—

A. You mean going down the Atanum following there on the south quarter, don't you?

Q. No, I refer to the direction from the head of the Atanum.

A. Yes, sir.

Q. Running on down the line through mile-post ninety and further on.

A. That is looking back.

Q. Looking back; what is the character of the ridge?

A. Well, that is precipitous; it dips off to the east there quite rapidly.

Q. Do you know what its altitude is there, or have you any idea of its altitude?

(Deposition of Jacob E. Noel.)

A. Oh, it is four or five thousand feet, probably higher than that; it went away up.

Q. And as compared to the country to the eastward over toward Fort Simcoe,—you know where Fort Simcoe is? A. Yes, I know.

Q. What would say of the comparative character of the two parts of the country, this and the country to the eastward?

A. Well, you mean in the immediate vicinity there.

Q. Well, as you go on down.

A. Well, that branched out into a good country as you went to the eastward.

Q. Into a valley, do you mean?

A. Yes, into a valley.

Q. And what is the comparative altitude between this ridge and the country to the eastward?

A. I looked over it.

Q. Is there much or little difference in altitude?

A. There is considerable difference in altitude.

Q. Have you ever been down into the country about Fort Simcoe? A. No.

Q. You never have been down into any of that easterly country? A. No.

Q. You never have been down into any of that easterly country? A. No.

Q. Have you been into the country west of the Klickitat valley? A. No.

Q. From your investigation and observation what would you say as to this ridge followed by the Schwartz survey appearing to be the main ridge, or

(Deposition of Jacob E. Noel.)

a main ridge of the Cascade Mountains?

Mr. AVERY.—Objected to as incompetent, irrelevant and calling for a conclusion of the witness as well as being contrary to the other evidence put in here by the defendant.

A. Well, it is decidedly the main ridge, the water flowing east into the Yakima, the others flowing south through Klickitas into the Columbia.

Q. The Klickitat, you mean?

A. The Klickitat. The saddle is well defined there, a marked place.

Q. What is that?

A. That saddle is well defined there.

Q. You mean the saddle at the head of the Atanum?

A. About one hundred mile-post there. There is only a little difference, probably not over one hundred chains, a scant quarter of a mile between the branches of the Atanum and the Klickitat, looking over north, and down here on the left-hand side of the waters feeding the Klickitat, and on the right-hand side the waters feeding the Atanum. And the grass, I noticed in some places was kind of being dried up and down in here, to your right, and down in here to your left (indicating on map).

Q. I notice that you report, in your report that on the night of August 4, I think it was, there was quite a fall of snow. Was that so?

A. That was a fact, yes, sir, there was snow fell, about two inches, I think.

Q. Is the character of this ridge such that, with-

(Deposition of Jacob E. Noel.)

out a careful investigation with the aid of instruments for the purpose of determining the altitude, it might be readily mistaken for the main ridge of the Cascade Mountains, admitting for the purpose of the question that the main ridge is westwardly some twenty miles, and running down to Mount Adams.

Mr. AVERY.—I object to that as manifestly leading, calling for a conclusion of the witness and also not based on sufficient data.

Q. Please state the fact without reference to any suggestion that may be in the question.

A. Well, my training as an engineer led me to follow that line as the dividing line between these waters, as I said before, that is the waters of those several streams, I think it was the Pisco and the Simcoe and the Atanum flowing into the Yakima and the various branches flowing into the Klickitat on the other side and from thence to the Columbia river. I mean to state that I would naturally follow that, as I had been told to find the divide between these waters and to follow that line.

Mr. AVERY.—I move to strike out what he had been told to do as not the best evidence.

Q. Now, what is the fact as to the character of this ridge being such that it might or might not be readily mistaken for the main ridge, conceding, for the purpose of the question, that the main ridge is some twenty miles further west.

Mr. AVERY.—I object to that on account of its being repetition and also calling for a conclusion of the witness and is manifestly leading.

(Deposition of Jacob E. Noel.)

A. The main ridge of the Cascades.

Q. Yes.

A. I would not mistake it for the main ridge of the Cascades.

Q. You would not? A. No.

Cross-examination.

(By Mr. A. G. AVERY.)

Q. This, Captain, commences at mile-post fifty-one on the Schwartz map? A. Yes, sir.

Q. This, between there and fifty-seven, say approximately about Potato Butte, that is really a kind of mountain, isn't it? A. Yes, sir.

Q. And it extends also at a lower altitude considerably east of that, doesn't it?

A. Well, not very far. It does extend somewhat in here, you know. Here is this little stream in there (indicating).

Q. Yes. A. That is in a depression.

Q. That is in a depression? A. Yes, sir.

Q. That little stream that runs up along the west side of Stagman Butte and Potato Butte, running north? A. Yes, sir.

Q. That is in a little depression in this general mass of high ground? A. Yes, sir.

Q. And on the east side of the Simcoe it gets higher again, doesn't it?

A. Well, it gets up, but not as high as this.

Q. Not as high as the west side?

A. Oh, it makes a little rise there, but not to come anywhere near being as high as the main ridge there.

(Deposition of Jacob E. Noël.)

Q. Then, I suppose from along Potato Butte up to past where the old military road crossed the Schwartz, that is practically a level country, isn't it?

A. No, I would not call it a level country, but it is rather flat there.

Q. Well, flat, I mean?

A. Well, there is trap rock, and broken, and iron rock there.

Q. Rather a flat country?

A. No, I wouldn't—approximately—I wouldn't call that a flat country. The divide was not as sharply defined there as in other places, but it is well enough defined to follow that ridge there.

Q. Didn't you have some difficulty in getting across that place, didn't you have some difficulty, you and Mr. Schwartz, in locating the highest part of it?

A. No, I did not. I don't know whether Schwartz had any difficulty or not. I didn't have any difficulty there in defining it.

Q. There is a range of hills or mountains extending east from the Schwartz line and running approximately parallel with the southern boundary, as shown by the Schwartz line, isn't there?

A. Their topography is there—

Q. Is that right?

A. Yes, but it is not well, it is a little different from the rest of the country; it is not a range of mountains; I would call it a range of hills.

Q. A range of hills? A. A sub-range.

Q. A sub-range? A. Yes, sir.

(Deposition of Jacob E. Noel.)

Q. And how far does that extend east from the Schwartz line?

A. Well, I couldn't tell you that.

Q. As far as you could see, perhaps?

A. No, not quite so far as that. I should say ten or twelve miles in there. It was lost in the haze there so I couldn't tell you the exact distance there. It might have been less than that, as I recall it.

Q. You don't know precisely then how far it runs out? A. No, only an estimate.

Q. How far north of the south line of the reservation as made by the Schwartz map is that first range, approximately?

A. Well, what is the scale of this (referring to the map), the best way I can answer that is, Mabton is in here, where we started from. That was nearly as high up as that would be in altitude. Now, that is somewhere in about here (indicating). That is one hundred and sixty chains to the inch.

Q. Well, approximately, Captain.

A. That would be five or six miles—oh, six or eight miles, I guess that would run up there.

Q. North?

A. North of the old south boundary.

Q. As surveyed by Schwartz? A. Yes, sir.

Q. Is there still north of that another parallel range of mountains, or approximately parallel range of mountains or hills, running from the Schwartz west line east?

A. Well, I don't know; I don't recollect that.

Q. That was really eighteen years ago, wasn't it,

(Deposition of Jacob E. Noel.)

Captain, that you made that?

A. Seventeen or eighteen years. It was ninety-one. It is just about seventeen years. It was the year after the Schwartz survey was made.

Q. Did you survey it or did you check it with the Schwartz survey? A. I checked it.

Q. You checked the Schwartz survey?

A. I checked it; I took the angles, you know.

Q. You were trying to see if the mile-posts of the Schwartz survey were located as indicated in his map?

A. Yes, and marked, and to see whether there was a divide and if the work was done.

Q. In other words, to see if he had done what he purported to have done?

A. Well, I was not only instructed to do that, you know, but to follow his survey as a critic, you might say, and also to see whether he followed the divide.

Q. What you were seeking to do then was to ascertain if from mile-post fifty-one up to the head of the Atanum was a watershed or divide?

A. That was part of my instructions. You see that divide was the divide between the Simcoe and the Frisco and the waters flowing into the Yakima and the waters flowing into the Klickitat and into the Columbia.

Q. Every watershed is called a divide, in surveying—isn't that the usual expression?

A. Well, it is hard to draw a distinction, but as a rule between any of the forks, I would call them a subdivide. There is a main divide you know for the

(Deposition of Jacob E. Noel.)

main streams and the subdivides they run out like a fellow's fingers would here (indicating) and the little streams come down. They are nearly always, in these larger streams of this country, well defined.

Q. Captain, going along this divide, with your field-glasses or otherwise, you could see all of the peaks of the Cascades, could you?

A. Yes, sir.

Q. And all of the country west?

A. Yes, all that country west of the line. Of course Mount Adams cut off the view any further.

Q. There is considerable of a declivity between the Hump and Mount Adams, isn't there?

A. No, sir, it is a broken, deep country there, broken up, you know, by these spurs that make the divide of the substreams that flow into the Klickitat.

Witness excused.

[Proceedings Had at Spokane, Wash., December 12, 1908, 10:30 o'clock A. M.]

Spokane, Wash., December 12, 1908.

10 o'clock A. M.

Taking of testimony resumed pursuant to notice, upon the stipulation heretofore entered into; all parties present.

[Certain Offers in Evidence, etc.]

Mr. CANNON.—The defendants offer in evidence that portion of the report of the Secretary of the Interior contained in volume two of the records of the 54th Congress, second session, document number 5, on page 317 of said volume two, being a part of the report of L. T. Erwin, United States Indian Agent,

to the Commissioner of Indian Affairs, dated Fort Simcoe, August 25th, 1896, the following portion being all that portion of his report relating to reservation description, and is as follows: "Reservation. The reservation is located in Yakima County, State of Washington. It is bounded on the north and east by the Yakima River, and Atanum Creek, on the west by the Cascade range of mountains, on the south by a spur of the Cascade range known as the Simcoe divide, and contains about 1400 square miles or 800,000 acres, consisting of mountains, foot hills, valleys and rolling prairie, and is watered by the Yakima River, Atanum, Toppenish, Simcoe and Satas creeks."

Mr. AVERY.—The Government objects to the introduction of the foregoing, on the ground that it is incompetent and immaterial; that it does not conform to the Yakima Treaty calls, nor is it in accordance with the boundary of said Yakima reservation as shown by Act of Congress of December 21, 1904 (33 Stat. 595); and for the further reason that any so-called description of said Yakima Indian Reservation not in accordance with said Treaty, nor any adoption of any description of said reservation other than that described in said treaty, is not binding on the Indian wards of the Government who are a party to said treaty, or who have any right, title or interest in the Yakima reservation, or any part thereof, nor is any Indian or ward of the Government bound by any description of said reservation other than the one contained in the treaty and as described and fixed by the Act of Congress of December 21, 1904 (33 Stat. 595).

Mr. AVERY.—I will offer in evidence a letter from Isaac I. Stevens, Governor and Superintendent of Indian Affairs of Washington Territory to the Hon. George W. Manypenny, Commissioner of Indian Affairs, Washington, D. C., dated at Olympia, April 30, 1857, as identifying and validating the Governor Stevens' map, which is known as Plaintiff's Exhibit 6, herein, and ask to have this marked Plaintiff's Exhibit "7."

Mr. LEE.—To which offer the defendants object upon the ground it is irrelevant and immaterial, not objecting to the same because the name of Governor Stevens does not appear to be signed to the copy.

(This is annexed to Defendants' Exhibit "E," under the same certificate.)

(Letter admitted and marked Plaintiff's Exhibit "7," admitted.)

Mr. AVERY.—I also offer in evidence copy of letter from W. W. Miller, Superintendent of Indian Affairs, Washington Territory, to T. F. Berny and J. Lodge, surveyors, dated Olympia, Washington Territory, September 10, 1861. This is under a certificate of the Acting Commissioner of Indian Affairs, dated February 12, 1908. I ask that it be marked Plaintiff's Exhibit "8."

Mr. LEE.—No objection.

(Letter admitted and marked Plaintiff's Exhibit "8," admitted.)

Mr. AVERY.—I offer in evidence a letter from R. H. Millroy, Superintendent of Indian Affairs Washington Territory, to Hon. E. P. Smith, Commissioner of Indian Affairs, Washington, D. C.,

dated Olympia, June 11, 1873, and ask that it be marked Plaintiff's Exhibit "9."

Mr. LEE.—I object to it as irrelevant and immaterial.

(Letter marked Plaintiff's Exhibit "9", admitted.)

Mr. AVERY.—I offer in evidence an agreement between William M. Miller, Superintendent of Indian Affairs for the Territory of Washington, acting for and on behalf of the United States, party of the first part, and Thomas F. Berry and James Lodge, surveyors, of the second part, dated September 9, 1861, and ask that it be marked Plaintiff's Exhibit "10."

Mr. LEE.—I object to it as irrelevant and immaterial.

(Paper marked Plaintiff's Exhibit "10," admitted.)

(Here a recess was taken until two o'clock to-day, December 12, 1908.)

Saturday, December 12, 1908, 2 o'clock P. M.

Taking of testimony resumed, pursuant to recess; all parties present.

[Deposition of George Garner, for Defendants.]

GEORGE GARNER, called as a witness on behalf of the defendants, after being first duly sworn and cautioned to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. LEE.)

Q. Your name is George Garner?

A. George Garner; yes, sir.

Q. Where do you live?

(Deposition of George Garner.)

A. Centerville, Kliekiyat County, Washington.

Q. You are a son of Henry Garner, who is one of the defendants in this action? A. Yes, sir.

Q. Do you know what land is involved in this suit in which your father and yourself are interested?

A. In this section thirteen, yes, sir.

Q. What is your recollection of the description of it? A. You mean the kind of land?

Q. No, the legal description.

A. Well, that lays—

Q. No, what is the section?

A. Section 13, Township 6, Range 15.

Q. And from whom did your father obtain his title to the land?

A. From the railroad company, through Zehner, he obtained a contract from Zehner, and then there was something to be paid yet before he got his title.

Q. And it was deeded to him by the railroad company?

A. It was deeded to him by the railroad company.

Q. Do you know the date?

A. No, I do not, but I think it was in—it seems to me it was in June. I didn't bring up the papers, but I am satisfied it was in June. I know it was in the summer.

Q. Now, Mr. Garner, are you familiar with the lines of the Yakima Indian Reservation near this land. A. Yes, sir.

Q. Are you familiar with both the old lines,

(Deposition of George Garner.)

meaning by that the line established by the Schwartz survey of 1890—

A. Yes.

Q. (Continued.) —and also the line that is known as the new line or Barnard line?

A. That was established in 1900—

Q. 1900 or thereabouts? A. Yes, sir.

Q. Where, with reference to this Barnard line, does this section thirteen lie?

A. That is the line of 1890?

Q. No, 1900.

A. 1900, rather. That lies south—well, it lies in a kind of a basin-like. The line goes nearly, near around it.

Q. On which side of it? A. North.

Q. Runs to the north of it?

A. Runs to the north of it.

Q. I show you Plaintiff's Exhibit 3. I will ask you if you have ever seen the trees that are described on page nine of that Plaintiff's Exhibit 3 (showing exhibit to the witness.)

A. I have seen this forked tree, but I don't know anything about this tree (indicating on exhibit). I never seen it.

Q. Tell us where the forked tree you refer to is.

A. Well, it is right on the dividing line of the mountain running west to Grayback, and it is, oh, maybe not more than two feet east of the old Government road. It might be three. It is right close.

Q. You refer to the old military road?

A. The old military road. You can almost touch it from the road.

(Deposition of George Garner.)

Q. Do you know where mile-post 29 is on that road? A. I know just about where it is.

Q. How far is this tree from that mile-post 29?

A. Well, it cannot be more than eighty rods; I don't think it is eighty rods, between forty and eighty rods.

Q. Now, the Barnard line that is referred to, being the line of 1900, runs where with reference to this forked tree and mile-post 29?

A. The Barnard line runs right at this forked tree. If anything, this goes a little bit north of it, but not enough to speak of it. As near as I can tell, the forked tree is on top of the divide.

Q. The Barnard line then from this tree, as I understand you, follows the top of the divide, does it?

A. Yes, sir.

Q. Running in a general westerly and easterly direction?

Mr. AVERY.—I object to it as leading and calling for the witness' conclusion.

A. It runs in an easterly direction for about 80 rods, and then it veers in a northeasterly direction from then on. It runs almost straight east for about 80 rods.

Q. Now, this section 13—6—15, E. W. M., lays upon which slope of that divide?

A. On the south and west slope.

Q. To what stream or streams do the waters from this section flow?

A. They flow into what is known as the Little Klickitat, and then on down into the Big Klickitat.

(Deposition of George Garner.)

Q. What is the fact as to this being drainage of the Columbia, as between the Columbia and the Satas? A. Yes, sir.

Q. It is? A. Yes, sir.

Q. And that is true of the entire section 13?

A. All of it, yes, sir.

Cross-examination.

(By Mr. AVERY.)

Q. You have been speaking about the Barnard line. Were you with Mr. Barnard when he made that line? A. No, sir.

Q. You don't know of your own knowledge anything about where that line is, do you?

A. Well, all that I know is that they call it the Barnard line, and I know where they say that follows down the mountain. I was not there when they surveyed it.

Q. All your knowledge of it is you assume that it is along the top of the ridge? A. Yes, sir.

Q. And you call the Barnard line the top of the ridge, is that right? A. At this place?

Q. Yes, sir.

A. That is the line that was surveyed since 1900. I could not swear it was the Barnard line, for I don't know the man's name and never met him, but that is the line surveyed, the last line.

Q. Well, did you see it surveyed?

A. Yes, I was there when the surveyors were surveying it.

Q. When was that?

A. Well, it has been since we bought this land,

(Deposition of George Garner.)

but I couldn't state, I don't remember just what year it was. It seems to me it was only three years ago, because I know we had a little piece of fence on there and the surveyor said that little piece of fence north of the line along there is the correctest line in this township.

Q. You think it would be three years ago, do you? A. Well, I don't know exactly.

Q. Well, it would not exceed four years, would it?

A. I know that it would not exceed five, because I made my homestead proof not five years ago, and it was made since then.

Q. It was since then? A. Yes, sir.

Q. You don't know who those surveyors were, do you? A. No, sir.

Q. And you don't know their object in being there?

A. I know they were surveying, and that is all I know.

Q. That is all, you don't know who sent them there? A. No, sir.

Q. And what is the character of the country immediately north of section 13?

A. How do you mean, what kind of a country, how does it lay?

Q. Yes, how does it lay.

A. Well, it lays in a westerly direction, the waters all flow into the Klickitat.

Q. All flow into the Klickitat, and the waters off from section 13 also flow into the Klickitat?

(Deposition of George Garner.)

A. From 13 flow into the Klickitat, but in the other way, that is the waters are between those two creeks, that is one is Summit Creek, that flows in a westerly direction on the north slope of the mountain. Then Bowman creek flows south and west. That is in section 13.

Q. Is the ridge of mountains or hills immediately north of thirteen, or at its northern side, steep and precipitous?

A. No, they are not steep, they are just a gradual incline, I should think, gradual, about 4,000 feet high.

Q. Well, of course, all that country around there near 13 is pretty high?

A. 13 is about 3,500, but they gradually climb more after a quarter of a mile, and then you reach that summit. It is a half, not quite a half a mile to the summit.

Q. And how far do you say that the north edge of 13 is to what you call the dividing line?

A. It is at, well, that line, you know, runs, it doesn't run direct; the nearest place is maybe a quarter.

Q. A quarter of—

A. Of a mile, 80 rods, between 60 and 80 rods.

Q. From the north edge of 13?

A. From the northwest edge of 13.

Q. To the—

A. To the highest point of the ridge.

Q. And that you thought was the Barnard line?

A. And that is the survey between 1900, between

(Deposition of George Garner.)

1900, and it would be five years ago, 1904.

Q. Well, you are assuming that the survey that you saw made there five years ago is the Barnard, five years or less ago, is the Barnard survey?

A. Well, no, I could not say that it is, because I don't know the man's name who surveyed it.

Q. Well, when you were asked on your direct examination about the Barnard survey, you referred to that survey that was made five or less years ago?

A. I have heard the man's name since called Barnard, that is all I know.

Q. I am asking you if that is the survey you referred to? A. Yes, in 1904.

Q. Made five years or less ago?

A. Yes. I am not acquainted with this man Barnard and never met him.

Q. Then, all you mean to testify to is that section 13 that you have referred to is south of the highest point of that ridge running towards Grayback? A. Yes.

Redirect Examination.

(By Mr. LEE.)

Q. Summit creek, you say, flows into what larger stream? A. The Klickitat.

Q. The Big or Little Klickitat?

A. At the foot of the ridge of the Big Klickitat.

Q. The Big Klickitat. That, then, is on the north slope of the ridge running to Grayback?

A. On the north slope of the ridge running to Grayback. It is impossible for anyone to get down there from Grayback to this creek.

(Deposition of George Garner.)

Q. And Bowman creek flows into what stream?

A. Into the Little Klickitat, and then into the Big Klickitat, flowing south to the Little Klickitat, and west to the Big Klickitat.

Witness excused.

[Deposition of Theodore Jackel, for Defendants.]

THEODORE JACKEL, called as a witness on behalf of the defendants, after being first duly sworn and cautioned to testify the truth, the whole truth and nothing but the truth herein, testified as follows:

Direct Examination.

(By Mr. LEE.)

Q. What is your first name?

A. Theodore.

Q. And you live where?

A. Centerville, Klickitat County, Washington.

Q. How long have you lived in that part of the country?

A. I have lived in that part of the country since '77, 1877.

Q. And you are familiar with the topography of that part of the country, are you?

A. Yes, sir.

Q. And you have been during all the time since 1877?

A. Yes, sir.

Q. You know where section 13, township 6, range 15, E. W. M. is?

A. Yes, sir.

Q. Where does it lie with reference to the summit of the ridge extending to Grayback?

A. It lies south and west.

(Deposition of Theodore Jackel.)

Q. Do you know where the old and new boundary lines of the Yakima Indian Reservation are near this land? A. Yes, sir.

Q. You are familiar with what is known as the Schwartz line of 1890, are you? A. Yes, sir.

Q. And you are also familiar with the new line of the reservation extending over to Grayback, are you? A. Yes, sir.

Q. Now, where, with reference to the new line, is this section 13? A. It is south and west.

Q. Where with reference to the Schwartz line does this land lie?

A. It lies south and west also.

Q. And west. Showing you the representation of a forked tree on page 7 of Plaintiff's Exhibit 3, you are familiar with that tree, are you?

A. Yes, sir.

Q. What is the fact as to that being upon the new line of the reservation.

A. Well, it is somewhere near it. I couldn't say just how close. I expect—

Q. And you also know where mile-post No. 29 on the military road is?

A. Well, pretty close, not positively.

Q. And the tree you refer to is near that same point? A. Yes, sir.

Q. And the line you speak of as being the new line or what we sometimes may call the Barnard line, runs through or near this forked tree?

A. Yes, sir.

Q. What is the fact, Mr. Jackel, as to there be-

(Deposition of Theodore Jackel.)

ing many or few blazed trees in that part of the country, both on and off of the reservation?

A. In that country?

Q. Yes, sir.

A. Well, there is, the military blazes runs through that country.

Q. Well, generally, as to their being blazed over the country generally upon trees, are they common or uncommon? A. Well, they are common.

Q. Do you know for what purpose they were made, or what purpose they served?

A. Well, I followed some indicating section lines, and there is one that run on the ridge that indicates a trail.

Q. What is the fact as to their being quite common in indicating trails of various kinds, if you know? A. I could not say, I don't know.

Q. There is some testimony as to there being mounds of stone at some points, for instance, at the junction of the Indian trail with the Goldendale road. Do you know where that mound of stone is?

A. At the Goldendale road?

Q. Yes, west of the Klickitat river.

A. I don't believe I do.

Q. What is the fact generally as to their being mounds of stone scattered over that part of the country, both on the survey and off?

A. Well, there is a great many. In some there is Indian graves.

Q. Monuments of an Indian grave?

A. Yes, sir.

(Deposition of Theodore Jackel.)

Q. Any other purpose for which they have been built?

A. Shelter for sheepherders and the line?

Cross-examination.

(By Mr. AVERY.)

Q. Did you see this Barnard survey made?

A. I saw part of it made.

Q. When was that made, *Mr.*, when did you see it made?

A. It was in, I couldn't state positively, I didn't put the date down at the time it was made.

Q. You don't mean to say that you saw the Barnard survey made? A. Barnard?

Q. Yes, sir.

A. Which do you call the Barnard survey?

Q. Well, I am trying to find out which you call the Barnard survey. You say you are familiar with the Barnard survey, in your direct examination, and also the Schwartz survey.

A. I am familiar with both of the surveys.

Q. Well, when did you see the Barnard survey made?

A. The Barnard survey, that is the survey that runs out west, is done something like between four and five years ago.

Q. You saw it made, did you?

A. They come right a little way west of that forked tree, and I came along and I was with another party and they said that was the new Indian reservation survey.

Q. Well, had they driven any posts along there?

(Deposition of Theodore Jackel.)

A. I hadn't noticed any posts, I noticed blazes on trees.

Q. Did you see them make blazes on trees?

A. Yes, sir.

Q. Well, they were not surveying with instruments, were they? A. I think so.

Q. Did you see them running a line out there with a tripod—

A. I saw an instrument standing there.

Q. What was it, a surveying instrument?

A. Yes, sir.

Q. Well, on a tripod, a three-legged instrument?

A. It was a compass set up in it.

Q. Well, you don't know anything about whether that was the Barnard survey, do you, Mr.?

A. I don't know anything about the names of those surveys until I came here. They were called the old and new reservation lines.

Q. Does this so-called survey that you refer to, of three or four years ago, or about that time, run north or south of mile-post 29?

A. It runs, well it is owing to which side of the post you were. It runs west of the post and it runs east of the post.

Q. Well, is it north or south of it, does it pass it on the north or pass it on the south of the post?

A. It is right close to the post. I don't know but what it comes to the tree.

Q. Well, it is close to it; is it close to it on its south side or on its north side?

A. I think it is on its north side.

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(Deposition of Theodore Jackel.)

Q. It is also on the north side of the forked tree, isn't it, too? A. Yes, sir.

Redirect Examination.

(By Mr. LEE.)

Q. Now, Mr. Jackel, I may have misled you somewhat. The Barnard survey I refer to is the one mentioned in the record, in Mr. Barnard's testimony, and other parts of the record here as having been made without any regular survey, in 1899. The survey that you refer to as establishing the new,—what you call the new line of the reservation, was made later than that, was it?

A. Yes, sir.

Witness excused.

[Deposition of John F. Parrott, for Defendants.]

JOHN F. PARROTT, called as a witness on behalf of the defendants, after being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LEE.)

Q. Your full name is what?

A. John F. Parrott.

Q. Where do you live? A. Portland.

Q. Oregon? A. Yes, sir.

Q. How old are you?

A. I am fifty-five.

Q. That makes you born in— A. —1853.

Q. What is your present occupation?

A. Commercial salesman.

Q. When were you born?

(Deposition of John F. Parrott.)

A. I was born on the 22d day of May, 1853.

Q. Are you familiar with the country comprising the Yakima Indian Reservation and lying to the westward thereof?

A. Yes, sir.

Q. Since what time have you been acquainted with that part of the country?

A. Since 1860.

Q. Where did you live in 1860?

A. I lived in Klickitat Valley, about 12 miles west, southwest of the present site of Goldendale.

Q. That, I assume, was your father's home and you resided at that home? A. Yes, sir.

Q. Now, referring to Schwartz' Exhibit "C," which is a representation of the survey of the south and west boundaries of the reservation, made in 1890, by George A. Schwartz, I will ask you if you are familiar and have been since 1859, with any portion of the reservation lines as shown on that exhibit?

A. Well, from—yes, sir—from 1860.

Q. 1860? A. Yes, sir.

Q. What portion of the boundary line of it?

A. Well, from the old North Yakima road to two or three—we will say about three miles west and north of Signal Peak. That would be from there to there (indicating on exhibit).

Q. By the North Yakima road, you refer to that— A. Yes, sir—

Q. Marked as crossing the boundary line between mile corners 40 and 41? A. Yes, sir.

Q. Marked "Road from The Dalles to North

(Deposition of John F. Parrott.)

Yakima''?

A. Yes, sir.

Q. And by Signal Peak you refer to the peak marked at about mile corner 80?

A. Yes, sir.

Q. Were you familiar with any part of this boundary line in the year 1860, or thereabouts?

A. Yes, sir.

Q. In what business was your father engaged at that time?

A. Well, he was in the cattle business, farming and cattle business.

Q. And he ranged or pastured his cattle over what lands?

A. Well, in Klickitat Valley.

Q. In the vicinity of what is now Goldendale?

A. Yes, sir, Goldendale and west of Goldendale.

Q. What market did he have for his cattle?

A. Portland.

Q. Portland?

A. Yes, sir, well—

Q. What is the fact of his selling any of his cattle to the Government, to be delivered to Fort Simcoe?

A. He sold a small bunch of beef cattle to be delivered in the fall of 1860 to Fort Simcoe.

Q. And were they so delivered?

A. Yes, sir.

Q. In what month, if you recall?

A. Well, as near as I can recall, it would be September.

Q. What is the fact as to your assisting in delivering these cattle?

A. My father and my brother in law, Mr. John Golden, and myself delivered the cattle.

(Deposition of John F. Parrott.)

Q. Drove them from where to where?

A. From our ranch, west of the site of Golden-dale, to Fort Simcoe, over the old Government road.

Q. That is over this road marked here as the Old Military Road?

A. Yes, sir, the old Government road.

Q. From Fort Simcoe to The Dalles?

A. Yes, sir, over that road.

Q. Now, to whom did you deliver the cattle?

A. Well, father—it is my recollection Father Wilbur was the—did the business for the Government.

Q. Father Wilbur was at that time the agent in charge of the reservation?

A. No, I don't think so; I think Bancroft or someone else was in charge just at that time, but a few months later he was.

Q. He is the same Father Wilbur that was at one time the Indian Agent?

A. Yes, sir, for many years.

Q. At what point did you meet Father Wilbur?

A. We met Father Wilbur at a point a few miles west of where the military road crossed the divide.

Q. Can you indicate it on Exhibit "C"?

A. Well, yes, sir, it is practically—

Q. This is where you met him? (Indicating on exhibit.)

A. Well, it was—

Q. This is, I assume, what you referred to as the divide?

A. There is a creek came down in here called

(Deposition of John F. Parrott.)

Summit Creek. Now, I don't know where that would be on here, but we were camped on Summit Creek, the principal creek that runs through Cedar Valley.

Q. And you were camped at night on Summit Creek?

A. Yes, sir, a few miles west of the Summit.

Q. And you saw Father Wilbur at that point?

A. Yes, sir, he met us over there and camped with us.

Q. Camped with you that night?

A. Yes, sir.

Q. The next day, what did you do?

A. Well, we were driving, driving slow and grazing as we went.

Q. On which side of the road?

A. We were on the left side of the road.

Q. The west side of the road that would be?

A. Yes, sir, the west side of the road.

Q. Was Father Wilbur accompanying you?

A. Yes, sir, he accompanied us the remainder of the way to Fort Simcoe.

Q. Did you cross the divide that day?

A. Yes, sir, we crossed the divide along early in the forenoon.

Q. What, if any, conversation took place between Father Wilbur and any members of your party, at or near the divide which was indicated by the Schwartz line, and particularly with reference to where the military road crossed.

Mr. AVERY.—I object to it on the ground that

(Deposition of John F. Parrott.)

it is incompetent, irrelevant and immaterial; no conversation had with Father Wilbur or anyone else could then have bound or now bind the Government; no such conversation could, whatever its character was, and particularly if it was in reference to the boundary line, could bind the Indians of the Yakima Nation, whose reservation is referred to in the complaint.

Mr. LEE.—This is offered for the purpose of showing the interpretation placed upon the Treaty by Father Wilbur and others at that time, namely about the year 1860.

Mr. AVERY.—Then, I add to my objection that Father Wilbur's interpretation cannot bind the Indians who owned and had rights on the reservation nor could it bind the Government. I object also to any conversation, not waiving my other objection, of course, that was not had with this witness or in his hearing.

The WITNESS.—This was in my presence.

Mr. LEE.—I am simply asking you for what you know of your own knowledge and what you there heard yourself? A. Yes, sir.

Q. Now, you may answer the question, just relating what, if anything, occurred there?

A. Well, as we were crossing the divide a short distance west of the Old Military Road, Father Wilbur showed my father and Mr. Golden and myself a monument that was marking the line between the reservation and the public lands.

Q. And what did he say, if anything?

(Deposition of John F. Parrott.)

Mr. AVERY.—My objection, of course, goes to all this. I do not care to repeat it every time.

Mr. LEE.—Yes.

A. Well, he said, "We are now crossing on the reservation."

Q. Now, will you indicate with your pencil the point, as nearly as you can, where you stood?

A. Where is the scale of miles here (indicating on Schwartz's Exhibit "C").

Q. Where you had the conversation?

A. Is this 63 and 64 (indicating on exhibit)?

Q. Yes, sir, that is 63 and 64.

A. Well, we were over near the 64 mile-post.

Q. As shown on Schwartz's Exhibit "C"?

A. Yes, sir. I will just make a check mark there.

Q. Suppose you put your initial "P" at that point in pencil.

A. (Witness marks initial on Schwartz's Exhibit "C.")

Q. What, if anything, was said by Father Wilbur at that time to you, or to your father in your presence? A. Well, he pointed out—

Q. With reference to the line of survey?

A. During the—during the early morning—I don't know as it was at that identical point, but during the early morning he pointed out this very high peak in here which is at—it must be along about mile-post 56, that. He also pointed that out as the dividing line between the public land and the reservation and he says "it runs out almost west from here to Signal Peak."

(Deposition of John F. Parrott.)

Q. "West from here" means from where?

A. Well, means from 64.

Q. Where you were standing at 64?

A. Yes, sir.

Q. To Signal Peak?

A. Yes, sir. That would be here (indicating) westerly, he pointed out to the west.

Q. Was there any other or further conversation had at that time relative to the west bound reservation?

A. No, nothing that I recollect. He just, Father Wilbur, called our attention to it and told us we were just crossing on to the reservation and he says, "Here is one of the monuments that marks the line."

Q. Now, were you subsequently over that boundary—

Mr. AVERY.—I move to strike out all the witness' testimony wherein he states what Father Wilbur said, or what Father Wilbur did, on the ground that it cannot bind the Government—cannot bind the Indians in whose behalf the Government is now acting and because it is incompetent, irrelevant and immaterial.

Q. —over the boundary line between the North Yakima Road and Signal Peak?

A. Yes, I have been all over it.

Q. And in what year or years particularly?

A. Well, I was over it in—as near as I can recollect in 1884.

Q. And over all that part of it?

(Deposition of John F. Parrott.)

A. No, I was over that part of it from the Military Road, from The Dalles to Fort Simcoe, to a point about two miles northwest of Signal Peak.

Q. What was the occasion of your being over it at that time? A. I was prospecting.

Q. What, if any evidence, was there upon the ground at that time of the marking of any line along this watershed, about where the Schwartz's line is?

Mr. AVERY.—I object to it as incompetent and irrelevant.

A. Well, there are monuments at apparently irregular intervals—that is, we found them irregular. We might not have found all of them—right on the road, on the divide between the watershed of the Toppenish and the watershed of the Klickitat.

Q. And what was their general character as to their being discernible to beyond or near the monument pointed out by Father Wilbur?

A. Why, they were the same.

Q. What, if anything, do you know of this being recognized as the line by the whites and the Indians, from the year 1860, when you first were over it, to 1884, at which time you were prospecting in there.

Mr. AVERY.—I object to it as incompetent, not the best evidence, and calling for the witness' conclusion.

A. Oh, it was generally conceded that Cedar Valley was public lands by all, both whites and the Indians.

(Deposition of John F. Parrott.)

Q. By Cedar Valley you refer to the land westerly from this divide? A. Yes, sir.

Mr. AVERY.—I interpose a motion to strike the witness' answer in regard to what was understood generally there inasmuch as it is not responsive and is the witness' conclusion, and is incompetent.

Q. Then, as I understand you, the whites and the Indians generally accepted this as the western boundary line of the reservation?

Mr. AVERY.—Additionally, this is very manifestly leading.

A. Yes, sir.

Q. Upon what facts do you base that statement?

A. Well, shortly after we delivered those cattle in the early sixties, people went in there and began to locate on that land.

Q. In the Cedar Valley? A. Yes, sir.

Q. White people?

A. Yes, sir, white people, unmolested.

Q. You mean they were all there those years and lived there unmolested? A. Yes, sir.

Q. Either by the Indians or the Government, is that correct? A. Yes, sir.

Q. Now, Mr. Parrott, are you familiar with the country to the east of this line, over to Fort Simcoe?

A. Well, not to any very great extent.

Q. You have been around there, have you?

A. I have been there, yes, sir, on two or three occasions.

Q. What is the general character of the land down—as shown around the survey of the west

(Deposition of John F. Parrott.)

boundary as represented on this Exhibit "C," as to its being a clearly defined mountain range, or otherwise?

A. Yes, sir, it is, it is quite clearly defined. You mean this part in here (indicating).

Q. Yes, sir, that part of it there, from mile-post 105 down that line to Walla Walla, say all the way down to mile-post 52, or thereabouts?

A. Well, I have only—I have been in—positions at different times where I could get a general bird's-eye view of all of this from the Goat Rocks and from a point up on the side of Mount Adams and Signal Peak, and this other high point, and the range is very clearly defined there.

Q. And you say you have also stood over in the country around Fort Simcoe? A. Yes, sir.

Q. Now, what is the appearance of the mountain range from that view point over near Fort Simcoe, well, from Simcoe west?

A. It is quite a rough, mountainous country through the summer.

Q. Is it possible to see the next mountain range westerly from that point?

A. No, sir; no, sir; you cannot see it. Well, you will have to come from the north and the east, you would have to, you would have to go clear to the summit to get a view of this next main divide between the Lewis River and the Klickitat.

Q. What do you mean by that Summit?

A. I mean this first Summit I spoke of here.

Q. You mean the Summit on the range on the line?

(Deposition of John F. Parrott.)

A. Well, yes, I mean the Summit around the—the other range of the Toppenish and the Big Klickitat.

Q. In order to see the next range easterly, you will have to get on the top of that range?

A. Yes, sir, because they are a long ways apart.

Q. Now, what is the fact as to this range viewed from the Simcoe Valley, about Fort Simcoe, or further easterly, appearing to be the main ridge of the Cascade Mountains?

A. Well, a person that has never been over in the Cascades in the neighborhood of Mount Adams would naturally come to the conclusion that it was the main Summit of the Cascades.

Q. What is the fact as to its so appearing from that point?

A. Well, it does appear to be the main range.

Q. The main range?

A. Yes, sir, it does appear to be to an observer that was not acquainted with the country.

Q. You are familiar, are you, with the language of the treaty defining the boundaries of the Yakima Indian Reservation?

A. Well, I have been, more or less.

Q. You have read it?

A. I have read it and I have been more or less familiar not with the—not from reading it in the Government reports, but from the people who owned land and lived in that country. I am familiar with it from their statements and statements from the Indian Agents at Fort Simcoe.

(Deposition of John F. Parrott.)

Q. What is the fact, in your judgment, as to the line shown on this Exhibit "C," being the Schwartz's survey of the western boundary of the reservation, answering the calls of the treaty as to that portion of the boundary?

Mr. AVERY.—I object to it on the ground that the witness is not qualified to answer, he has not shown himself competent, he is not familiar with the language of the treaty and it is a matter that speaks for itself and it would be the witness' conclusion, it also calls for the witness' conclusion and it is incompetent.

A. Did you infer from that question, the language of the treaty, did you infer pertaining to the boundary of this reservation?

Q. Yes, its western boundary answering the calls of the treaty as to that portion of the boundary, particularly that portion that you are familiar with?

A. Yes, sir.

Q. Does it or does it not answer those calls?

Mr. AVERY.—The same objection, the witness is not qualified to answer. He has shown himself to be incompetent, he is not familiar with the treaty; it is a matter that speaks for itself, it would be the witness' conclusion and it is incompetent.

A. Yes, sir.

Mr. LEE.—You can cross-examine him.

Cross-examination.

(By Mr. AVERY.)

Q. You say you were accompanying your father in delivering cattle on the reservation in 1860?

(Deposition of John F. Parrott.)

A. Yes, sir.

Q. You were seven years old at that time?

A. I was about 8.

Q. Didn't I understand you to say that you were born—

A. I was born on the 22d day of May, 1853.

Q. Well, you were seven years old?

A. Well, yes.

Q. How many were there in that party?

A. Three a-part of the way.

Q. Were you over the reservation at all between 1860 and 1884?

A. Yes, sir.

Q. Where did you live during that period?

A. Well, sir, I lived in—I lived the greater part of the time in Eastern Oregon, either in Klickitat Valley or near The Dalles. I lived in Salem about 7 or 8 years, I went down there to go to school.

Q. Well, how did you happen to be up here in that portion after 1860 and before 1884, when you said you prospected out there?

A. Well, I was out there prospecting in, I think, in '84, '83 or '84, or '85, I can't remember just exactly.

Q. No, you were not up there, as I understood it, between 1860 and 1884?

A. No, no, I think not, no.

Q. You were not on the reservation during that time?

A. Well, I was on the reservation, but not in that particular place.

Q. I mean around the boundary line there, or the

(Deposition of John F. Parrott.)

Schwartz's survey line? A. No.

Q. What was Bancroft's name that was the agent when you took the stock on the reservation, when Father Wilbur was present?

A. How is that?

Q. Who was the agent at the time you delivered the stock to the reservation? You said his name was Bancroft, do you remember that?

A. No, I don't remember.

Q. He was the Indian Agent then?

A. He was the Indian Agent. Father Wilbur did all the business between my father, in the purchase of the cattle.

Q. Father Wilbur was afterwards the Indian Agent? A. Yes, shortly after that.

Q. Calling your attention to the Schwartz map here (Exhibit "C"), are there not two or three ranges of mountains or hills running from this Schwartz survey east?

A. Yes, sir.

Q. About three, are there?

A. I imagine, I believe there is three, sir: There is one between the Satas and the Toppenish and then between the Toppenish and the Atanum, or the main ridges that run east through that reservation.

Q. Well, they are approximately the same size as the ridge on the Schwartz survey, are they?

A. No, they are small.

Q. They are not quite so large?

A. They are not quite so prominent.

Q. Where do they commence running east on the

(Deposition of John F. Parrott.)

Schwartz's survey, back lower or where?

A. Commence running on the north side of the Satas.

Q. Well, do you mean by that along in here by Stagman Butte somewheres?

A. Well, I am not familiar with name. Up here is the head of the Satas (indicating).

Q. Here is the Satas? (Indicating.)

A. Yes, sir, it runs off down through here (indicating).

Q. You are pointing north there?

A. Yes, sir.

Q. Then there is another ridge running from the center of the line, approximately the center of the Schwartz's line, easterly?

A. Yes, sir, between the Toppenish and the Satas there is a main ridge, a very prominent ridge that runs down through there.

Q. A very prominent ridge that runs there?

A. Yes, sir.

Q. Does this ridge start north of the Old Military Road?

A. Yes, sir.

Q. And south of the source of the Toppenish?

A. Yes, sir.

Q. That is about the same size, height and ruggedness as that one on the Schwartz's survey?

A. No, not quite.

Q. And it runs northeast or east?

A. Well, it runs towards the Yakima River almost direct. I am generally kind of turned around as to the direction. North or northeast.

(Deposition of John F. Parrott.)

Q. Either north or northeast?

A. Yes, sir.

Q. That would run to the Yakima River?

A. Yes, sir.

Q. Then there is another still off here, Mr. Parrott (indicating)?

A. Yes, sir.

Q. That is, starts about where and runs east?

A. Well, I have not been over in that part of the country. From my view, it would probably start over in there, about the 105 mile-post, somewhere in that locality, probably back this way a little more, about the 96 or 98 mile-post, somewhere in there to the north of Fort Simcoe and the watershed of the Toppenish.

Q. Well, those three ranges run easterly or substantially so?

A. Well, I don't know where you mean, the three, unless you count this one, the line down here between on the south side.

Q. Well, perhaps, you misunderstand me, I thought you said there were three?

A. No, there is two.

Q. Two of them?

A. Two of them that I know.

Q. Then that last one you spoke of is really along, that is, still on the reservation, the northern one?

A. Yes, sir.

Q. Well, that would make three, wouldn't it, this one (indicating) and this one (indicating) and this one (indicating).

A. That is only two. No, this is not (indicat-

(Deposition of John F. Parrott.)

ing); there is just one and that one (indicating), that I know of. If there was any more than that, it is further north than I have been and I am not familiar with it, as far as I know.

Q. Then, I will ask you to state just how many ranges or mountains or hills there are north of the south line of the reservation running east from the Schwartz's survey.

A. Well, there is two that I know of. Now, I don't know, I have not been to the north line, north-east, to the north line of the reservation.

Q. You never have been up on the north line of the reservation?

A. No, sir, not back in here (indicating). I have been down near the Yakima.

Q. Have you ever been up north of Signal Creek, over two or three miles?

A. Yes, sir, further up there.

Q. You have never been north of Signal Creek on this line except for two or three miles?

A. Just a few miles.

Q. And you don't know anything about the line north of that? A. No.

Q. Now, how far from this Schwartz's survey is the main ridge of the Cascade Mountain, approximately? A. Oh, from here (indicating).

Q. Yes, sir, from the Schwartz's survey to the main ridge of the Cascade Mountain?

A. Now, let me see, it must be—well, approximately 15 miles.

Q. The main range of the Cascades is observable

(Deposition of John F. Parrott.)

when you are standing on the Schwartz line, isn't it?

A. Well, on the prominent peaks of the Schwartz line only.

Q. Only on the prominent peaks?

A. Yes, sir.

Q. Well, do you know why it is not observable on all parts of it?

A. Well, it is very heavy timber.

Q. Well, outside of the timber?

A. Oh, certainly, yes, sir.

Q. Have you traveled all along the Schwartz's survey from the south part, about mile-post 51, up to Signal Creek? A. No, sir.

Q. *The*, when you say that it is a well—

A. I have traveled on this, practically on the Schwartz's survey, from the North Yakima road to mile-post about 56, and then I have been on the line from 64 up to pretty close to 81.

Q. Now, you don't mean to say, do you, Mr. Parrott, that that is a well-defined ridge all the way?

A. Oh, yes; yes, sir; that is an absolute divide of the watershed.

Q. Well, I am asking you if you mean to say it is a well-defined ridge all the way along that line?

A. Well, do you mean that as to a sharp peak?

Q. Yes, sir.

A. No, it is not a well-defined ridge, particularly through here (indicating).

Q. Through the center part of it?

A. At Signal Peak, it is a well-defined ridge, sharp, abrupt.

(Deposition of John F. Parrott.)

Q. There is much of it that, while it may be a watershed, it is not a well-defined ridge?

A. No, along in here, or along the branch overlapping it, from over along, say about five miles west of the Military Road to Signal Peak, it is somewhat of a flat country in there.

Q. How is it so far as to timber, how is it as to being timbered along this Schwartz survey as far as you know?

A. About all of it is fairly good timber and some meadow and hay and farming land, on the summit, in that particular part, has some very nice meadows in there.

Q. That is, there are meadows right on the plateau of the table land?

A. Yes, sir.

Q. How many head of stock did you have?

A. I will have to kind of guess at it; it was in the neighborhood of 25; not a very big bunch.

Q. Then, I take it from what you say, that while they are some precipitous places along the Schwartz's survey on the east that it is not—

A. You point on the—on the east, do you?

Q. I mean on the west, that it is not exactly a mountainous range there, but it is a hill and a watershed.

A. It is a very prominent mountain range.

Q. It is a very prominent mountain range?

A. Yes, sir, it is a very prominent mountain range.

Q. Is it as high up above here (indicating) as it is down here (indicating)?

(Deposition of John F. Parrott.)

A. Those you were pointing are the two highest.

Q. Indicating what?

A. Mount Simcoe, about 56 mile-post, and Signal Peak. I can see almost to Spokane from the top of that mountain.

Q. Which mountain? A. Mount Simcoe.

Q. Well, where is Mount Simcoe?

A. Well, we call it the Simcoe Mountain; it is the most prominent peak of this divide here; it is above the timber line quite a way up in there.

Q. Now, I understand you to say that this high mountain that you refer to as Simcoe Mountain is about where, somewhere about Mile-post 56 would be as marked on this map?

A. Yes, sir; it is a very prominent and distinct divide all the way down as far as I have placed it.

Q. Yes, I understand that it is a very prominent and distinct divide.

A. It is a range, I mean. Of course, in here it is possibly less in there (indicating).

Q. Well, there is no name to it, no range of mountains? A. No.

Q. Never had a name?

A. Well, I have always known it ever since I was six years old as the Simcoe Mountain.

Q. Simcoe Mountain? A. Yes, sir.

Q. I thought this was Simcoe Mountain at Mile-post 56?

A. Well, it is all Simcoe Mountain in here.

Q. Well, then, it is called Simcoe Mountain and not mountains?

(Deposition of John F. Parrott.)

A. Well, it runs from here to here (indicating). I don't know what the technical name is in there.

Q. Then, I understand you to say that from where the road from The Dalles to North Yakima crosses the south boundary, to up about Signal Peak—

A. Yes, sir.

Q. It is called the Simcoe Mountain?

A. That is what that is commonly designated as by the old timers. It is just simply called a long divide. That is the common expression of all of the old timers.

Q. And there isn't any other name to it nor is there any name to that north of it?

A. Not that I ever heard of.

Q. So far as you know?

A. Not that I know of.

Witness excused.

Examiner's Certificate [to Depositions Filed June 21, 1909.]

I do hereby certify that the foregoing testimony, and the whole thereof, of the respective witnesses named therein, was duly taken before me at the dates and places named in connection with the taking of said testimony; that before said witnesses testified they were each severally sworn by me and cautioned to tell the truth, the whole truth, and nothing but the truth; and then the foregoing testimony of each witness as named was taken and written down by me; that during all the taking of said testimony the complainant appeared and was represented by Honorable

A. G. Avery, United States Attorney, and the defendants appeared and were represented by Messrs. Cannon and Lee, their attorneys; and it was by them stipulated before me that the testimony of all witnesses who testified before me, and by me taken down should be accepted as the testimony given by said witnesses, and by me reported to the Court as their testimony, without being signed by them; and I do further certify that the several exhibits which accompany this testimony were offered in evidence as noted therein, and in the report of the taking thereof.

Witness my hand, at Spokane, Washington, this 10th day of March, A. D. 1909.

(Signed) JOHN H. PELLETIER,
Examiner.

[Endorsements]: Testimony Taken Before Special Examiner. Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Divi-
sion.*

UNITED STATES OF AMERICA

vs.

NORTHERN PACIFIC RAILWAY COMPANY.

Deposition of C. W. Bunn.

Taken at Saint Paul, Minnesota, March 11th, 1909.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Divi-
sion.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

Stipulation [Re Deposition of C. W. Bunn].

It is hereby stipulated by and between the complainant and defendants, by their respective solicitors and counselors that the testimony of C. W. Bunn, general counsel of the defendant Northern Pacific Railway Company, may be taken by deposition at the Northern Pacific general offices in St. Paul, Minnesota, before any notary public or other competent officer authorized to administer oaths, on Friday the 12th day of March, 1909, at two (2) o'clock P. M., or as soon thereafter as shall suit the

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convenience of said C. W. Bunn and the United States District Attorney for the ——— District of Minnesota, residing at St. Paul, Minn., or his deputy who will appear at the taking of said testimony as solicitor for the complainant, or at such other time as shall be agreed upon by C. W. Bunn and said United States District Attorney or his deputy, and that said deposition shall be received by the court with like force and effect as though said testimony was taken by a commissioner duly appointed by the court herein.

Dated at Spokane, Washington, this 9th day of March, 1909.

(Signed) A. G. AVERY,
Solicitor for Complainant.

(Signed) EDWARD J. CANNON,
Solicitor for Defendants.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

Testimony of C. W. Bunn, taken at the general offices of the Northern Pacific Railway Company in Saint Paul, Minnesota, on the 11th day of March, A. D. 1909, before H. Harcourt Horn, a Notary

Public in and for said county and State, at 2 o'clock P. M. of said day, pursuant to stipulation hereto attached and returned herewith.

Mr. C. C. Houpt, United States District Attorney for the District of Minnesota, appeared on behalf of the complainant; Mr. C. W. Bunn appeared on behalf of the defendant Northern Pacific Railway Company.

[Deposition of C. W. Bunn.]

C. W. BUNN, being first duly sworn, deposes and says: I am general counsel of the Northern Pacific Railway Company, and have been since the first day of September, 1896. I have been and am familiar, in a general way, with the controversy raised by the pleadings in this cause, and with the facts which gave rise to it.

I have caused to be prepared by the Northern Pacific Land Department a statement of the lands involved in this suit by Township and Range, which statement shows the number of acres of place and of indemnity, of sold and unsold, of surveyed and unsurveyed lands, and of selected indemnity lands. This statement is believed to be correct. Of course as to unpatented lands it is an estimate.

Said statements are herewith introduced and are marked Defendant's Exhibits 1 and 2, and the same are hereto appended and made a part of this deposition.

From August 15, 1893, to September 1, 1896, the Northern Pacific Railroad Company, the Federal corporation, was in a condition of insolvency, and its railway and its land grant were in the hands of re-

(Deposition of C. W. Bunn.)

ceivers of various Circuit Courts of the United States. Such rights as that company had to the lands involved in this suit were in the hands of the receiver appointed by the Circuit Court of the United States for the District of Washington. The receivership proceedings referred to resulted in foreclosure decrees under which the whole railway and the land grant of the company, excepting certain land in Minnesota and North Dakota, were sold at public auction. At the sale of lands for the State of Washington which took place August 3, 1896, patented lands were offered in Government subdivisions and the right to receive unpatented lands and all interest of the railroad in such lands were sold in bulk. The land sale for Washington was confirmed by the Circuit Court of the United States for that place on the 8th day of August, 1896.

The Northern Pacific Railway Company, a corporation of the State of Wisconsin became the purchaser at the foreclosure sale of both the railway and of the lands and rights to receive lands then belonging to the railroad company. After the confirmation of the foreclosure sales and on the first day of September, 1896, the railway company went into possession of all the property so purchased. On the tenth day of November, 1896, it executed and delivered to the Mercantile Trust Company of New York a mortgage which covered all the property and rights of property, bought, as before stated, at the foreclosure sales. Bonds have been issued under this mortgage to the amount of \$105,979,500, and have been

(Deposition of C. W. Bunn.)

sold in all the principal bond markets of this country and Europe.

I have been general counsel of the Northern Pacific Railway Company since the first of September, 1896. When it bought at the foreclosure sales and went into possession it supposed that the boundaries of the Yakima Indian Reservation would remain as then established. It knew of no suspicion or doubt as to the correctness of the then established and recognized boundary. I believe that the first intimation it received that there was any doubt about the correctness about the then recognized boundary was in the year 1900 or 1901, some time after E. C. Barnard made his report of January 12, 1900.

Of the mortgage bonds before referred to, \$74,812,500 were issued and sold prior to the thirtieth of June, 1897.

The character, location and acreage of the lands described in the statement above referred to are shown by the records of the Northern Pacific Land Department, and these statements were made by the Chief Clerk of that Department. The Railway Company is perfectly willing to have all its records in this respect examined by any representative of the United States. Also as to the bonds referred to, the date of issue and sales thereof are shown by the books of the Northern Pacific Railway Company and by the accounts in the possession of the Comptroller of that Company; the books are also open to the inspection of any representative of the United States in this suit.

[Stipulation Re Deposition of C. W. Bunn.]

At the conclusion of the foregoing deposition it was stipulated and agreed that all objections which might be made to this deposition on the ground of immateriality, incompetency or irrelevancy might be made at the hearing of said cause, on the reading of said deposition.

(Signed) CHARLES W. BUNN.

Defendants' Exhibit No. 1.**STATE OF WASHINGTON.****PLACE LIMITS.**

Twp. Rge.		Patented.		Unpatented and Unsold.	
		Sold.	Unsold	Surveyed	Unsurveyed Approx- imated.
N.	E.	Acres.	Acres.	Acres.	Acres.
10	13				2480
11	13				4160
8	13		1549.92	1208.88	
9	13		7756.71		480
10	13				9320
11	13				7680
7	14		3376.80	2734.02	
8	14				10880
9	14				1080
10	14				380
11	14				4640
6	15	2553.73		1997.14	
7	15			9645.80	
8	15				8320
Totals		2553.73	12282.43	15385.84	4940

Defendants' Exhibit No. 2.
STATE OF WASHINGTON.
INDEMNITY LIMITS.

Twp. Ege.		Patented. Unsold.	Surveyed. Selected.	Unpatented and Unsold. Surveyed Unsurveyed Unselected. Approx- imated.	
N.	E.	Acres.	Acres.	Acres.	Acres.
8	11				2160
9	11				4480
7	12	240	2162		
8	13				10880
9	13				10080
10	12				7120
11	13				980
6	13		800	1196.75	
7	13	273.22	10895.92		
8	13	1371.02	6720		320
9	13	742.36			400
6	14		5625.46		180
7	14	640	4968.04		
6	15		1200.80		
Totals:		3267.10	32172.22	1196.75	26500

[Notary's Certificate to Deposition of C. W. Bunn.]
United States of America,
District of Minnesota,—ss.

I, H. Harcourt Horn, the duly appointed notary public to take and return the deposition of C. W. Bunn, pursuant to the stipulation hereto affixed, do hereby certify that at the time and place heretofore named in the caption thereof, I was a duly commissioned and qualified Notary Public in and for the county of Ramsey, State of Minnesota, in which county and state the city of Saint Paul therein referred to is situated; that at said time I was attended

by the parties by their solicitors, and that the deponent herein, C. W. Bunn, being of sound mind and lawful age, was before the commencement of the taking of his deposition, by me duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the deposition of said C. W. Bunn was reduced to writing by myself in the presence of the deponent and the said solicitors, and from the statements of the said deponent, and that the foregoing is a true, full and correct transcript of the statements so made by said deponent.

I further certify that the exhibits attached to this deposition as Exhibits "1" and "2" are the original and only exhibits offered by deponent in connection with his said deposition, as the same are returned herewith, and together with said deposition form a complete record of all the proceedings before me at the time and place heretofore mentioned.

In witness whereof I have hereunto set my hand and seal this 15th day of March, A. D. 1909.

[Notarial Seal]

(Signed) H. HARCOURT HORN,
Notary Public, Ramsey County, Minnesota.
My Commission expires November 3, 1910.

[Endorsements]: Deposition published per stipulation this 21st day of June, 1909, and refiled the same date.

FRANK C. NASH,
Clerk.

Original Filing of Deposition. Filed March 26th, 1909. Frank C. Nash, Clerk. Deposition of C. W. Bunn.

Plaintiff's Exhibit No. 5.

*In the Circuit Court of the United States for the
Eastern District of Washington.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), and THE MERCANTILE
TRUST COMPANY (a Corporation),

Defendants.

Lis Pendens.

NOTICE IS HEREBY GIVEN that an action has been commenced in the above-entitled court by the above-named complainant against the above-named defendants, which suit is now pending.

That the object of said suit is to cancel and set aside certain patents issued by the United States, complainant herein, to defendant Northern Pacific Railway Company, a corporation (or to Northern Pacific Railroad Company, its predecessor in interest), for the respective parcels of land described in the annexed list which is marked EXHIBIT "A" and made a part hereof, said patents having been issued on the dates in said EXHIBIT "A" set opposite said parcels of land respectively; and to annul, cancel and set aside any right, title, interest or estate in and to any and all of the lands described in said EXHIBIT "A" had or claimed by either of the de-

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fendants herein, and have the title to said lands declared to be in the United States, free and clear of all rights, title, interest, estate or incumbrance had or claimed by defendants or others therein.

Dated this 9th day of January, 1907.

(Signed) A. G. AVERY,
United States Attorney.

Exhibit "A."

List of lands for which patents have been issued to the Northern Pacific Railroad Company and the Northern Pacific Railway Company. The lands appearing herein as having had patents issued therefor prior to September 1, 1896, are those for which patents were received by the Northern Pacific Railroad Company. The patents issued after said last named date were issued to the Northern Pacific Railway Company.

Description.	Sec., N.	Tp., R.	Range, E.	Patented.
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ and S. $\frac{1}{2}$ SE. $\frac{1}{4}$	11	7	12	Jan. 4, 1904
Lots 1 and 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$. 1—6—13				
				Selected only
NW. $\frac{1}{4}$	11	6	13	
SW. $\frac{1}{4}$ NE. $\frac{1}{4}$	1	7	13	Jan. 4, 1904
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ and Lots 1, 2, 3 and 4.....	19	7	13	Jan. 4, 1904
All.....	1	8	13	May 10, 1895
Lots 1, 2, 3 and 4 W. $\frac{1}{2}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ SE. $\frac{1}{4}$	5	8	13	Jan. 4, 1904

Description.	Sec.	Tp.	Range,	Patented.
	N.	E.		
All.....	13	8	13	Mar. 5, 1901
All.....	15	8	13	Jan. 4, 1904
Lots 3, 4, 9 and 10.....	19	8	13	Jan. 4, 1904
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SE. $\frac{1}{4}$	25	8	13	May 10, 1895
Lots 3, 4, 9 and 10.....	31	8	13	Jan. 4, 1904
W. $\frac{1}{2}$ NW. $\frac{1}{4}$ and W. $\frac{1}{2}$ SW. $\frac{1}{4}$	33	8	13	Jan. 4, 1904
Lots 1 and 2 and S. $\frac{1}{2}$ NE. $\frac{1}{4}$	1	9	13	Jan. 6, 1896
Lots 3 and 4 and S. $\frac{1}{2}$ NW. $\frac{1}{4}$	1	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	1	9	13	Jan. 6, 1896
SW. $\frac{1}{4}$	1	9	13	Jan. 6, 1896
Lots 1 and 2 and S. $\frac{1}{2}$ NE. $\frac{1}{4}$	3	9	13	Jan. 6, 1896
Lots 3 and 4 and S. $\frac{1}{2}$ NW. $\frac{1}{4}$	3	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	3	9	13	Jan. 6, 1896
SW. $\frac{1}{4}$	3	9	13	Jan. 6, 1896
Lots 1 and 2 and S. $\frac{1}{2}$ NE. $\frac{1}{4}$	5	9	13	Jan. 6, 1896
Lots 3 and 4 and S. $\frac{1}{2}$ NW. $\frac{1}{4}$	5	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	5	9	13	Jan. 6, 1896
SW. $\frac{1}{4}$	5	9	13	Jan. 6, 1896
NE. $\frac{1}{4}$	7	9	13	Selected only
Lot 2 and SE. $\frac{1}{4}$ NW. $\frac{1}{4}$..	7	9	13	Jan. 4, 1904
Lot 1 and NE. $\frac{1}{4}$ NW. $\frac{1}{4}$..	7	9	13	Jan. 6, 1896
SE. $\frac{1}{4}$	7	9	13	Selected only
All.....	9	9	13	Jan. 6, 1896

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Description.	Sec., N.,	Tp., R.,	Range, E.	Patented.
All.....	11	9	13	Jan. 6, 1896
All.....	13	9	13	Jan. 6, 1896
All.....	15	9	13	Jan. 6, 1896
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$ E. $\frac{1}{2}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$	17	9	13	Jan. 6, 1896
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ and SE. $\frac{1}{4}$ NE. $\frac{1}{4}$	19	9	13	Jan. 4, 1904
All.....	21	9	13	Jan. 6, 1896
All.....	23	9	13	Jan. 6, 1896
All.....	25	9	13	Jan. 6, 1896
All.....	27	9	13	Jan. 6, 1896
N. $\frac{1}{2}$ NE. $\frac{1}{4}$	29	9	13	Jan. 6, 1896
NW. $\frac{1}{4}$ NW. $\frac{1}{4}$	29	9	13	Jan. 4, 1904
Lots 3 and 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and N. $\frac{1}{2}$ SE. $\frac{1}{4}$	31	9	13	Jan. 4, 1904
NE. $\frac{1}{4}$ N. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SE. $\frac{1}{4}$	33	9	13	Jan. 6, 1896
S. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$	33	9	13	Jan. 4, 1904
All.....	35	9	13	Jan. 6, 1896
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Lot 1 and SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	1	6	14	Selected only
Frl. NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Frl. SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ and Lot 2.....	7	6	14	
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ and SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	11	6	14	
E. $\frac{1}{2}$ NW. $\frac{1}{4}$	13	6	14	
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ and S. $\frac{1}{2}$ SE. $\frac{1}{4}$	15	6	14	

Description.	Sec., N.,	Twp., R.,	Range, E.	Patented.
All.....	1	7	14	May 10, 1895
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 1, 2, 3, 4, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$	5	7	14	May 10, 1895
All.....	9	7	14	May 10, 1895
All.....	13	7	14	May 10, 1895
NE. $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	14	May 10, 1895
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$	21	7	14	Jan. 4, 1904
All.....	25	7	14	May 10, 1895
W. $\frac{1}{2}$ NE. $\frac{1}{4}$	27	7	14	Selected only
N. $\frac{1}{2}$ SW. $\frac{1}{4}$	29	7	14	Jan. 4, 1904
SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	31	7	14	Jan. 4, 1904
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	35	7	14	Jan. 4, 1904
All.....	1	6	15	Jan. 6, 1896
All.....	5	6	15	Jan. 6, 1896
Lot 4 and SE. $\frac{1}{4}$ SW. $\frac{1}{4}$..	7	6	15	Selected only
All.....	9	6	15	Jan. 6, 1896
All.....	13	6	15	Jan. 6, 1896

[Endorsements on back]:

LIS PENDENS.

State of Washington,
County of Klickitat,—ss.

Filed for record this 11th day of February, A. D.
1907, at 22 minutes past 8 o'clock A. M., and recorded
at the request of A. G. Avery, in Book "B" of Ex-

ecution Records of Klickitat County, Washington, at
Page 422-3-4.

(Signed) A. M. MacLEOD,
County Auditor.

Filed for record at the request of A. G. Avery, Jan.
11, A. D. 1907, at 45 minutes past nine o'clock A. M.,
and recorded in Vol. 52, of Deeds, page 196, Records
of Yakima County, Washington.

(Signed) W. B. NEWCOMB,
County Auditor.
By W. Crocker,
Deputy.

[Seal of County Auditor of Yakima County.]

Complainant's Exhibit 5. Filed in the U. S. Cir-
cuit Court for the Eastern District of Washington,
June 21, 1909. Frank C. Nash, Clerk.

Plaintiff's Exhibit No. 7.

ADMITTED DEC. 12, 1908.

Office Supt. Indian Affairs, Ter. Wash.
Olympia, April 30, 1857.

Hon. Geo. W. Manypenny,
Commissioner of Indian Affairs,
Washington City, D. C.

Sir: I have in compliance with the instructions of
the Department the honor herewith to transmit a
map of the Indian Tribes of the Territory of Wash-
ington, and of that portion of the Territory of Ne-
braska lying to the eastward as far as the mouth of
the Yellowstone. I can vouch for the general ac-
curacy of the map and of the Indian statistics given

in it. Accompanying this map I have also the honor to transmit two reports in regard to the Indian Tribes shown thereon,—one by Mr. Geo. Gibbs, the Surveyor and Secretary in the Sound Treaties, the other by Mr. Denig, the factor in charge of the Post of the American Fur Company, (Fort Union) at the mouth of the Yellowstone.

For information in reference to the geography of the country, I shall be obliged at this time respectfully to refer the Department to the several reports of myself and my officers to the War Department in the discharge of my duties as Superintendent in charge of the exploration and survey of the Northern Pacific Rail Road Route, all which have been published by order of Congress. It has been and still is my intention to embody the information which I have since collected and which is extensive and interesting in a proper memoir for the service of the Government.

I am, Sir, very respectfully

Your most obedient servant,

Gov. & Supt.

[Endorsements]: Plaintiff's Exhibit "7." Filed in the Circuit Court of the United States for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

Plaintiff's Exhibit No. 8.

ADMITTED DEC. 12, 1908.

Office Supt. Indian Affairs,
Olympia, W. T., September 10th, 1861.

Gentlemen:

Under your surveying contract of the 9th inst., you will commence with the Yakima Reservation.

By reference to the treaty with these Indians of June 9th, 1855, it appears only necessary to survey and mark the Southern boundary of their reservation, as the other lines of demarkation are natural boundaries, and sufficiently unmistakable for all practical purposes.

In making this survey, you will commence on the Yakima river, where the "divide" separating the waters of the Satass river from those flowing into the Columbia river, juts against said Yakima river, and proceed westerly along said "divide," and along the "divide" between the Klickitat and Pisco rivers, until you arrive at the source of either the Pisco, or, Klickitat, river, which point will terminate the survey.

Should you find, before arriving at the source of either of these rivers, that the "divide" has assumed the character of a perfect natural boundary, you will terminate your survey at the point where this description of boundary is attained.

Your initial point on the Yakima river, should be "eight miles below the mouth of the Satass river"; should the intersection of the "divide" referred to, with the Yakima river, not be plain and apparent,

you will then commence at the mouth of the Satass river, run thence eight miles down the Yakima, and from this point, proceed as previously directed.

I am Gentlemen, Very Respectfully

(Signed) W. W. MILLER,

Supt. Indian Affairs, W. T.

Messrs. T. F. Berry & J. Lodge,

Surveyors &c., Olympia, W. T.

[Endorsements]: Plff's. Exhibit "8." Filed
June 21, 1909. F. C. Nash, Clerk.

Plaintiff's Exhibit No. 9.

ADMITTED DEC. 12, 1908.

Office of

Superintendent Indian Affairs,

Washington Territory, Olympia, June 11, 1873.

Hon. E. P. Smith,

Commr. Ind. Affairs,

Washington, D. C.

Sir: I have the honor to acknowledge the receipt of your communication of the 28th Ult., stating that Congress at its last session appropriated by an act approved March 3, 1873, the sum of \$200,000 for surveying the boundaries of Indian Reservations and subdividing portion of the same, and that out of this amount the Department had directed that the sum of \$20,450 be used in the manner recommended by me in the execution of surveys within this Superintendency in my letter of 23 Oct. last (of which this office had been informed in letter of April 19 last) and that "as the amount appropriated by Congress for Indian surveys is far short of "the sum asked by

"the Department, I (you) am constrained to decline,
 "at present, the recommendation of any increase in
 "the amount already authorized to be expended for
 "surveys in Washington Territory," as made in my
 letter 8 May last.

I find by reference to the last named letter that I
 recommended that in lieu of the estimate made Oct.
 23 last for \$20,450, that the following estimate be
 allowed which will embrace the establishing of the
 boundaries, sectionizing and dividing into forty acre
 lots the reservations as follows:

Simcoe.....	\$16,000
Neah Bay.....	2,500
Puyallup.....	3,500
Fidalgo.....	900
Nisqually.. ..	1,000
Tulalip.....	2,500
Skokomish.....	1,000
Lummi.. ..	1,500
Suuaxin.. ..	600
Port Madison.....	1,200
Muckleshoot.....	300
Chehalis.....	500
Colville.....	14,000

Total.....\$45,500

On the 3 April last this office was informed by
 letter from the Surveyor General Wash. Ter. that
 in accordance with the request of Hon. S. Garfield,
 contained in a letter to the Indian Office at Wash-
 ington, D. C., under date of Feb. 20/73 said office
 recommended to the Sec. of the Interior that six

townships in the Yakama Indian Reservation in this Ter. be subdivided into forty acre tracts, and that the Hon. Sec. Interior had accordingly directed that said survey be made in compliance with that request and order, and that the cost of said survey was "not to exceed \$14,000 payable out of the appropriation of \$55,000 approved May 29, 1872," which survey I have the honor to report is now being made.

The six townships required to be surveyed in the Yakama Reservation embrace nearly all of the arable land therein contained, and will be sufficient to give fixed homes to all the Indians belonging thereto who at present desire them, and hence no further surveys will be needed there for some time. And from the fact that the \$14,000 allowed for the survey of said six townships was taken from the appropriation of \$55,000 approved May 29, 1872, and that the \$16,000 asked for by me for the survey of the Yakama, or Simcoe, Reservation and included in the \$20,450 estimate allowed by you for the survey of Indian reservations in this Territory, and taken from the appropriation of \$200,000 approved March 3, 1873, will not now be needed for that reservation; and as the whole of the \$20,450 is needed for the survey of other reservations in this Territory, as is shown by my letters of the 8th ult. and of the 9th inst., I respectfully ask that I be permitted to designate the reservations and parts of reservations to be surveyed into 40 acre lots as far as said allowance of \$20,450 will go towards paying for the same.

And as the Surveyor General of this Territory has not yet been officially notified of said allowance of

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\$20,450 for the survey of Indian Reservations, within the Territory, and as surveying can only be done, in this Territory, during the summer, and fall seasons, and as the necessity for the survey of some of the reservations is very urgent, I respectfully request that the Surveyor General of this Ty. be notified of said allowance of \$20,450 and ordered to let contracts for surveys to that amount as speedily as possible.

I have the honor to be,

Very respectfully,

R. H. MILROY,

Supt. Ind. Affairs W. T.

[Endorsements on back of Exhibit]:

Wash. Sup. M. 232.

R. H. Milroy,

Olympia, W. T., June 11, 1873.

Replying to office letter of 28th ult. rel. to survey of Ind. Resvs.

See report to Secy. of the Interior July 11, 1873.

Received at Indian Office June 23, 1873.

Plaintiff's Exhibit 9. Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

Plaintiff's Exhibit No 10.

ADMITTED DEC. 12, 1908.

This agreement made this 19th day of September, A. D., 1861, between William W. Miller, Superintendent of Indian Affairs for the Territory of Washington, acting for and in behalf of the United States,

of the First Part, and Thomas F. Berry and James Lodge, Surveyors, of the Second Part, Witnesseth:—

That the said Thomas F. Berry and James Lodge for and in consideration of the terms, conditions, provisions and covenants hereafter expressed, and according to the true intent and meaning thereof, do hereby covenant and agree to faithfully survey and mark all the boundaries of the Indian Reservations East of the Cascade Mountains, that are necessary to be surveyed and marked, in a workmanlike manner, and return the Field Notes and Plats thereof in Triplicate; on or prior to the first day of December, A. D. 1862, to the Office of the Superintendent of Indian Affairs.

And the said William W. Miller, in his capacity aforesaid shall pay to the aforesaid Thomas F. Berry and James Lodge the sum of Twenty Dollars per mile, for every mile, and part of mile run.

Whenever the Field Notes and Plats of any one Reservation are returned, the money shall be due therefor.

As the object of making these surveys is especially to establish lines of plain demarkation, it is distinctly understood that when natural boundaries exist to those Reservations, such as Rivers, Ranges of Mountains and so forth, such boundaries shall not be surveyed nor paid for under this contract.

It is also understood that mile posts with proper distances marked thereon shall be established with the usual bearing trees.

And it is also further provided that the Super-

intendent of Indian Affairs for the Territory of Washington, for the time being, shall be the judge of what lines of boundaries it is necessary to run, and the said surveys shall be executed in accordance with written instructions from said Superintendent, with whom is reserved the right of determining which Reservation shall be first surveyed, and the order of surveying the balance.

In testimony of all which, we have hereunto set our hands and affixed our seals, the day and year above written.

WM. W. MILLER, [Seal]

Superintendent Indian Affairs, Washn. Tery.

THOMAS F. BERRY. [Seal]

JAMES LODGE. [Seal]

Signed, sealed and delivered in presence of

H. A. GOLDSBOROUGH.

L. D. DURGIN.

[Endorsements]: Plaintiff's Exhibits "8," "9" and "10." Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

DEPARTMENT OF THE INTERIOR.

Office of Indian Affairs,

Washington, D. C. Feb. 12, 1908.

I, C. F. Larabee, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be

affixed, on the day and year first above written.

(Signed) C. F. LARABEE,
Acting Commissioner.

[Seal of Office of Indian Affairs.]

[Endorsements]: Plaintiff's Exhibits "8," "9"
and "10." Filed in the U. S. Circuit Court for the
Eastern District of Washington, June 21, 1909.
Frank C. Nash, Clerk.

Schwartz Exhibit "A."

OFFICE OF U. S. SURVEYOR GENERAL,
STATE OF WASHINGTON.

Olympia, June 20, 1890.

George A. Schwartz,

U. S. Deputy Surveyor,
Olympia, Washington,

Sir: The surveys authorized under your contract
No. 344, bearing date June 20, 1890, the "re-survey
and survey of the south and west boundary of the
Yakima Indian Reservation," must be executed in
strict conformity with the "Manual of Surveying
Instructions for the survey of the Public Lands,"
approved December 2, 1889, as far as applicable, and
the following Special Instructions, to which you will
be rigidly held.

The instrument to be used in this survey, a Survey-
ors Transit, must be examined and approved under
the direction of this office, and your chain compared
and adjusted to the standard measure, before com-
mencing your work.

The necessary observations to test the accuracy of

your work and the condition of your instrument, as required in the Manual, must be recorded in your field notes, under proper dates, as you proceed with your work.

The true magnetic variation must be noted at the initial point of survey, and at each angle thereof, and whenever the variation of the needle is observed to change along the line, the same must be noted and the reasons therefor stated, if known.

You will commence the re-survey of the $47\frac{1}{2}$ miles of the south boundary of the Reservation, at the established initial point, at the corner to fractional sections 25 and 30, township 9 north, range 22 and 23 east, Willamette Meridian, Washington, on the south bank of the Yakima River; thence proceed, by courses and distances, as shown in the copy of the field notes of survey furnished you, to the $47\frac{1}{2}$ mile post, permanently re-establishing whenever necessary the *on-half-mile* and mile corners. The mile and half-mile corners must be established in the same manner prescribed in the revised manual of December 2, 1889, for the establishment of township corners upon the lines of public surveys, except, that stones not less in size than 1,000 cubic inches, must be used in all cases where they can be obtained, to mark both mile and half-mile monuments, a mound of stone to be built alongside of each stone monument. Where stones cannot be obtained, posts must be used, *not less than six inches square, $4\frac{1}{2}$ inches long, and 24 inches in the ground.* All monuments must be *permanently and conspicuously marked*, the mile monuments marked with the number of miles,

as "1 M.," "2 M.," etc., on the side first approached when following line *from* initial point, on the side facing the reservation with the letters "Y. I. R." (for Yakima Indian Reservation) and on the opposite side with the letters "U. S. P. L." (for United States Public Lands,) and the figures "1890." Where bearing trees are used in connection with mile corners, they must be marked in addition to the letters "B. T." with the letters "Y. I. R." if they stand on the reservation side of the line. The half-mile corner monuments must be marked on the side first approached when following line *from* initial point " $\frac{1}{2}$ M." and bearing trees when used in connection with said corners, marked " $\frac{1}{2}$ M. B. T." A post or some other distinguishing monument must also be placed at each angle or change of course of the line, the post or stone marked with the letters "Y. I. R." on the side facing the Reservation. In extending the survey, from the $47\frac{1}{2}$ mile post, the corners are to be established and marked in the same manner as given for the re-surveyed lines. As far as practicable, bearings and distances should also be taken from each of the corners, to prominent natural objects, if any within a convenient distance, in the same manner as required for bearing trees, and such objects must be marked with the initials "Y. I. R." and "B. O." (bearing object). Witness corners will be established, where necessary, in the same manner as required in the instructions for the survey of public lands. In all cases where the lines of the reservation survey intersect the established lines of survey of public lands, the course and distance from

such point of intersection to the nearest corner on the line of the prior survey must be carefully run, measured and noted.

At the end of each mile along the boundary of the Reservation, the character of the soil and amount of timber, grass, etc., must be stated; and the date of each day's work in the field must be noted at the end of the record thereof. The requirements in the "Summary of objects and data required to be noted," as set forth in the Manual, pages 41-45, must also be observed. A general description of the lines run must be given at the end of your field notes of survey, which description must embrace a brief statement of the main features of the tracts surveyed, character of the land, timber, and other natural growth, kinds of mineral, if any, settlements, characteristics of mountains, streams, springs, etc., and such other data as may be of importance.

From the $47\frac{1}{2}$ mile post, the line to be surveyed extends along the divide separating the waters of the Satass from those flowing into the Columbia, "to the divide" between the waters of the Klickitat and Pisco Rivers; thence along said divide to "the spur whence flow the waters of said "rivers; thence up said spur to the main "ridge of the Cascade Mountains; thence "northerly along said ridge, passing south and east of Mount Adams, "to the southern Tributary of the Attahnam river,— "to the established corner of fractional sections 6 and 31, on the south boundary of Township 12 north, range 15 east, Willamette Meridian. According to the statement of the Agent in charge of the Yakima Agency, "the

question as to which is the main ridge of the Cascade Mountains referred to in the treaty is a subject of disagreement, the Indians claiming that the main ridge extends to the base of Mount Adams on the south and east,—white men with diverse interests claiming the said ridge to be further east”; also, “that no river known as the Pisco, is shown on any map, and that he has found no person, white or Indian, who has knowledge of any river of that name,” “that the river designated as the Toppenish on the map of 1887, is the Pisco referred to in the treaty. It is delineated on the diagram, as rising about six miles nearly due east of Mount Adams and a very short distance north of the second Standard Parallel.”

It is, therefore, advisable, that before you proceed to definitely locate and extend the boundary of the Reservation from the $47\frac{1}{2}$ mile post, you confer with the Agent in charge of the Yakima Agency, and with other white persons, and Indians, familiar with the country, and obtain all the information possible that will tend to a proper location and establishment of this section of the boundary line according to the provisions of the treaty of June 9, 1855.

You will return to this office, with your field notes a topographical map or plat of the survey.

As far as practicable, all objects described in field notes, and the main features of the tract surveyed, including streams, mountains, roads, etc., must be protracted on such plat as accurately as possible, on a scale of one-half inch to the mile.

Your field notes of survey must be returned to this

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office, with the preliminary and final oaths of yourself and assistants on the blanks furnished you, your field notes on regular field-note paper, the same size as the blank oaths, as soon as practicable after the completion of the survey.

Very respectfully,

THOS. H. CAVANAUGH, Jr.,
U. S. Surv. Gen'l., Washington.

FAS.

[Endorsements on back of letter]:

90 84 303 - 4

Special Instructions issued to George A. Schwartz,
U. S. Deputy Surveyor, under his contract No. 344,
dated June 20, 1890.

1891-101495-2.

OFFICE OF U. S. SURVEYOR GENERAL,
STATE OF WASHINGTON,

Olympia, March 24, 1896.

Special Instructions, Contract No. 493.

McPherson & Wyche,

U. S. Deputy Surveyors.

Sirs: Under your contract No. 493 dated March 24, 1896, you are required to re-survey the south and west boundaries of the Yakima Indian Reservation through townships 6 north, ranges 16, 17, 18, 19 and part of 20 east, W. M., from the 54th mile post to the 23rd mile post on said Bdy., also through Twps. 7 north, Range 21, East, W. M., from the 17½ mile post to the 10th mile post on said Boundary, making a total distance of 38½ miles of boundary line.

You will also be required to make connections to

established corners on both sides of the boundary line of the public land surveys and the Indian Surveys (i. e., surveys within the Yakima Indian Reservation). It must be clearly understood by you that the only compensation which will be allowed you in executing all surveys under this contract, will be that for re-surveying the boundary of the Reservation to wit: at the rate of \$15 per mile, which compensation is understood to include all connections made by you *without additional compensation*.

The surveys authorized under contract No. 493, bearing date March 24, 1896, must be executed in strict conformity with the "Manual of Surveying Instructions" approved June 30, 1894, and the following Special Instructions.

You will use in making this survey a surveyors transit, which must be examined and approved by this office, and you chain compared and adjusted to the standard measure, before commencing your work.

You will begin at the 10th mile post on the Reservation Boundary in case said post is east of the township line between ranges 21 and 22 East; if not so located begin at the nearest corner on said Boundary east of said range line.

After having made an observation on Polaris for the determination of a true meridian, proceed to re-survey the boundary to the 17½ mile post, permanently re-establishing on the same, in case the same are destroyed, the one half mile and mile posts. You will also remember that you are required to make frequent observations on Polaris for the deter-

mination of the true meridian during the progress of the survey.

You will bear in mind that you are to re-establish all one-half mile and mile posts where originally established, and your notes of survey shall give the courses and distances between such posts and the connections made to the public land and Indian Surveys. Such connections will be made by measuring and recording the courses and distances to the nearest corner from point of intersection of boundary line and section or township lines.

If your measurement across sections that are intersected by the Reservation Boundary, reveals the fact that the width of any section varies materially from that shown in former field notes, you are required to remeasure your line and carefully examine your work for error, and if satisfied that the former survey was erroneous, you will ascertain and report the true courses and distances thereof, sufficient to enable this office to correctly compute the areas of all fractional lots produced by the interesting boundary, that being the chief object for which this survey was authorized to be made. A *material variation* is such as in your opinion shows careless and unskillful chaining or compass work; and a closer standard of accuracy should be required upon open and even ground, than in mountainous and difficult work.

You will in all cases report the exact results found by your measurements, whether the discrepancy is small or large, showing in definite terms whether you intersect an objective corner or fall so many links to one side or the other.

The mile and half mile corners must be established in the same manner prescribed in the Manual of 1894 for the establishment of township corners upon the lines of public surveys, except that stones not less in size than 1728 cubic inches must be used in all cases when they can be obtained, to make both mile and half mile monuments, a mound of stone to be built alongside of each stone monument.

When stones cannot be obtained posts must be used, *not less than* six inches square, three feet long and twenty-four inches in the ground. (See note on page 45, Manual.)

All monuments must be *permanently and conspicuously marked*, the mile monuments marked with the number of miles as "10 M.," "11 M.," etc., on the side first approached then following the line *from* initial point.

On the side facing the Reservation with the letters "Y. I. R." (For Yakima Indian Reservation) and on the opposite side with the letters "U. S. P. L." (For United States Public Lands) and the figures "1896."

When bearing trees are used in connection with mile corners, they must be marked, in addition to the letters "B. T.," with the letters "Y. I. R." if any stand on the Reservation side of the line.

The half mile corner monuments must be marked on the side first approached when following line *from* initial point, " $\frac{1}{2}$ M." and bearing trees when used in connection with said corners marked " $\frac{1}{2}$ M. B. T."

A post, or some other distinguishing monument

must also be placed at each angle or change of course of the line, the post or stone marked with the letters "Y. I. R." on the side facing the Reservation. In all cases when the line of the reservation survey intersects the established lines of survey of public lands, or survey of lands within the reservation, the courses and distances from such point of intersection to the nearest corner on the line of the prior survey must be carefully run, measured and noted. You will also at such point of intersection establish a corner, marked as directed in Manual of 1894 (see specimen field notes page 191 and Plate IV).

Your attention is called to pages 60 to 65 of Manual of 1894, relative to the manner of writing your field notes and "Summary of objects and data required to be noted" on pages 58 and 59.

A general description of the lines run must be given at the end of your field notes of survey, which must embrace a brief statement of the main features of the tract surveyed, character of the land, timber and other natural growth. Kinds of mineral, if any; settlements; character of mountains, streams, etc. etc., and such other data as may be of importance.

The re-survey of the boundary lines from the 23rd mile post to the 54th mile post will be executed in the same manner as directed for survey from the 10th to the 17½ mile post, first making required observation for true meridian and repeating the process as often as possible during the survey.

You will return to this office with your field notes a topographical plat of the survey on a scale of not less than one half inch to the mile. Your field notes

of survey for filing must be returned to this office with the preliminary and final oaths of yourself and assistants on the blanks furnished you. Your field notes on field notes paper the size of blank oaths.

You will also file with these notes your notes *actually taken in the field* while executing this survey.

Very respectfully,

WM. P. WATSON,

U. S. Surveyor General,

Washington.

FAS.

[Endorsements on back of letter]:

Rec'd with Sur. Gen's letter dated May 1, 1896,

No. 51313.

U. S. SURVEYOR GENERAL'S OFFICE,
STATE OF WASHINGTON.

Olympia, March 24th, 1896.

Relating to Cont. No. 493.

Special Instructions to McPherson and Wyche.

51313.

DEPARTMENT OF THE INTERIOR.

General Land Office.

Washington, D. C., July 24, 1906.

I hereby certify that the annexed copies of special instructions under contracts Nos. 344 and 493, Washington, dated June 30, 1890 and March 24, 1896, respectively, are true and literal exemplifications of the original special instructions on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be

affixed, at the City of Washington, on the day and year above written.

(Signed) G. F. POLLOCK.

Acting Commissioner of the General Land Office.

[Seal of General Land Office.]

[Endorsements]: Schwartz Exhibit "A." Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

Schwartz Exhibit "B."

Yakima Indian Reservation.

S. and W. Bdys.

Note: The notes of this boundary from page 1 to 64, comprising the 1st to 47th mile post, are omitted from this transcript.

Beginning at the 47th mile post.

Thence N. 77° 30' W. on Forty-eighth mile.

Var. 22° 03' E.

6.50 Intersect Forty-seventh mile cor. which was a basalt stone 8 ins. above ground and 20x10 ins. marked 47 M. 1886 Y. I. R. and U. S. P. L. from which bears

A pine 10 ins. diam. N. 20° W. 51 lks. dist.

Marked Y. I. R. 47 M. 1886 B. T.

I then destroyed all marks.

15.60 Set a basalt stone 18x15x6 ins. 12 ins. in the ground for angle point marked Y. I. R. on side facing the Reservation, and raised mound of stone 2 ft. high 4½ ft. base along side.

Thence N. 50° W. 1.22

Var. 22° 03' E.

- 40.00 Set a basalt stone 30x15x7 ins. 10 ins. in the ground.

Could not set it deeper for rock, for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SE. face and raised a mound of stone 3 ft. high $5\frac{1}{2}$ ft. base alongside.

- 41.52 Set a basalt stone 30x24x10 ins. 12 ins. in the ground for angle point too rocky to set deeper marked Y. I. R. on the Reservation side and raised mound of stone $2\frac{1}{2}$ ft. high $4\frac{1}{2}$ ft. base alongside.

Basalt rock 20 ft. high 30 ft. diam. N. 20 lks. Thence N. 80° W.

Var. 22° 03' E.

Yakima Indian Reservation.

- 46.52 Intersect $\frac{1}{2}$ mile cor. and Terminal point of the old survey, which is a post 8 ft. long 6 ins. sq. marked $47\frac{1}{2}$ M. Y. I. R. 1886 and U. S. P. L. with mound of stone; destroyed all marks and mound.

Descend gradually along top of divide between the Satas and the N. fork of three creeks which flow into the Columbia river.

- 67.00 Ascend gradually and enter dense black pine and spruce timbers bears N. and S.

- 80.00 Set a post 6 ins. sq. 5 ft. long 2 ft. in the ground for Forty-eight mile cor. marked 48 M. on E. face Y. I. R. on side facing the Reservation and on opposite side U. S. P. L. 1890, from which bears

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A balsam 8 ins. diam. N. 36° E. 26 lks. dist.

Marked Y. I. R. 48 M. B. T.

A balsam 20 ins. diam. S. 40° E. 40 lks. dist.

Marked 48 M. 1890 B. T.

A balsam 10 ins. diam. S. 30½° W. 27 lks. dist.

Marked 48 M. 1890 B. T.

A balsam 15 ins. diam. N. 50° W. 39 lks. dist.

Marked Y. I. R. 48 M. B. T.

Land mountainous; soil rocky 3rd rate too high for agricultural purposes; fair growth of bunch grass. 13 chs. dense black pines, spruce balsam and tamarack.

Bal. scattering all of inferior quality unfit for milling.

.....
Thence N. 80° W. on Forty-ninth mile.

Var. 22° 03' E.

Ascend gradually along top of main divide through dense black pine and spruce timber.

3.60 Intersect line bet. secs. 15 and 16 made search 6 chs. N. for ¼ sec. cor. but could not discover any trace of it.

Yakima Indian Reservation.

19.23 Intersect blank pine 10 ins. diam. marked Y. I. R. on side facing the reservation and blazed on each side facing the line for angle cor.

Thence N. 61° W.

Var. 22° 03' E.

31.10 Set black pine post 6 ins. sq. 4½ ft. long 2

ft. in the ground for angle point marked
Y. I. R. on side facing the reservation and
raised mound of earth 2 ft. high $4\frac{1}{2}$ ft.
base around post.

Thence S. 71° W.

Var $20\frac{1}{4}^\circ$ E.

Change caused by local attraction.

- 40.00 Set black pine post 6 ins. sq. $4\frac{1}{2}$ ft. long 2
ft. in the ground for $\frac{1}{2}$ mile cor. marked
 $\frac{1}{2}$ M. on the NE. face, from which bears
A black pine 10 ins. diam. N. $71\frac{1}{2}$ E. 9 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

A black pine 18 ins. diam. S. 69° W. 29 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

- 61.80 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground for angle point marked Y. I. R. on
side facing the reservation and raised a
mound of earth 2 ft. high $4\frac{1}{2}$ ft. base
around post.

Thence I run S. $25\frac{1}{2}^\circ$ W.

Var. $20\frac{1}{4}^\circ$ E.

Ascend gradually.

- 70.00 Set a post 5 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground for angle point marked Y. I. R. on
side facing the reservation and raised
mound of earth 2 ft. high $4\frac{1}{2}$ ft. base
around post.

Thence S. 22° W.

Yakima Indian Reservation.

Var. $20\frac{1}{4}^{\circ}$ E.

Enter burnt timber bears E. and W.

71.50 Head of dry gulch course NW. and head of the Satas river.

80.00 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for Forty-ninth mile cor. marked 49 M. on NE. face Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 from which bears

A spruce 15 ins. diam. N. $85\frac{1}{2}^{\circ}$ W. 48 lks dist.

Marked Y. I. R. 49 M. B. T.

A black pine 15 ins. diam. S. $19\frac{1}{2}^{\circ}$ E. 105 lks. dist.

Marked 49 1890 B. T.

A black pine 8 ins. diam. S. $54\frac{1}{2}^{\circ}$ W. 98 lks. dist.

Marked Y. I. R. 49 M. B. T.

No other live trees within limits.

Land mountainous; dense growth of black pine spruce scattering balsam and tamarack all low and scrubby inferior patches of mountain ash. Soil light loam and stony in places fair 2nd rate; no grass.

Oct. 1st, 1890.

On the night of Oct. 1st, 1890, I took an observation on Polaris at 6h. 39m. local mean time of greatest eastern elongation.

Magnetic course of star.....N. $18^{\circ} 25'$ W.

Azimuth Lat. 46° N..... $1^{\circ} 50' .5''$ W.

The sun is the variation..... $20^{\circ} 15' .5''$ E.

Drove stake 3 chs. N. on line for future reference on the meridian so determined.

.....

Yakima Indian Reservation.

At 7 A. M. Oct. 2, 1890, I set my instrument on line established last night and find its magnetic bearing to be N. $20^{\circ} 18'$ W. and after allowing 2.6' for diurnal change find the mean declination to be $20^{\circ} 15'$ E.

Thence I run S. 22° W. on Fiftieth mile.

Var. $20^{\circ} 18'$ E.

1.00 Leave burnt timber bears E. and W. and enter dense black pine.

6.22 Set black pine post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for angle point marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A black pine 15 ins. diam. N. $47\frac{1}{2}^{\circ}$ W. 65 lks. dist.

Marked Y. I. R. B. T.

Thence S. 9° W.

Var. $20^{\circ} 18'$ E.

Ascend gradually along top of divide.

25.80 Set stone 18x10x10 ins. 12 ins. in the ground for angle point marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A black pine 18 ins. diam. S. 44° W. 16 lks. dist.

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Marked Y. I. R. B. T.

Thence I run south.

Var. 20° 18' E.

- 40.00 Set a black pine post 6 ins. sq. 41½ ft. long
2 ft. in the ground for ½ mile cor. marked
½ M. on N. side from which bears
A black pine 18 ins. diam. N. 89° W. 20 lks.
dist.

Marked ½ M. B. T.

Yakima Indian Reservation.

- A black pine 12 ins. diam. S. 10° W. 8 lks.
dist.

Marked ½ M. B. T.

- 44.90 A point 15 lks. W. of cor. to secs. 17, 16, 20
and 21 which is a stake 2 ins. sq. 3 ft. long
marked S. 16 on NE. face. S. 17 and T.
6 N. on NW. face, S. 20 on SW. and S. 21
on 16 on SE. face from which bears
A black pine 12 ins. diam. S. 46° W. 11 lks.
dist.

Marked S. 20.

- A black pine 10 ins. diam. S. 61° E. 70 lks.
dist.

Marked S. 21 R. 16.

- A black pine 8 ins. diam. N. 43° E. 37 lks.
dist.

Marked S. 16 T. 6 N.

- A balsam 4 ins. diam. N. 49° W. 42 lks. dist.

Marked S. 17.

- 63.50 Set basalt stone 24x15x10 ins. 18 ins. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of stone 2 ft.

high $4\frac{1}{2}$ ft. base alongside from which bears

A black pine 20 ins. diam. S. 42° E. 36 lks. dist.

Marked B. T.

Thence I ran South $65^\circ 45'$ W.

Var. $20^\circ 18'$ E.

- 71.52 On top of pinnacle of basalt rock about 40 ft. high and 50x20 ft. Set a spruce post 7 ins. Sq. 5 ft. long marked Y. I. R. on side facing the reservation; raised mound of stone $3\frac{1}{2}$ ft. high 6 ft. base around post for angle cor. which can be seen from all directions.

A Spur bears S.

Thence I run N. $70\frac{1}{2}^\circ$ W.

Var. 21° E.

Change caused by local attraction.

Descend across gap.

Yakima Indian Reservation.

- 80.00 Set fir post 10 ins. SQ. $4\frac{1}{2}$ ft. long 2 ft. in the ground for Fiftieth Mile Cor. marked 50 M. on E. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of stone and earth $2\frac{1}{2}$ ft. high 5 ft. base around post from which bears

A fir 24 ins. diam. N. 36° E. 52 lks. dist.

Marked Y. I. R. 50 M. B. T.

A basalt rock $4\frac{1}{2}$ ft. high 10 ft. long bears S. $17\frac{1}{2}^\circ$ W. 96 lks. dist. marked U. S. P. L. 1890, 50 M. B. O. with a cross (x).

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A black pine 10 ins. diam. N. $65\frac{1}{2}^{\circ}$ W. 65
lks. dist.

Marked Y. I. R. 50 M. B. T.

.....
Thence N. $70\frac{1}{2}^{\circ}$ W. on Fifty-first mile.

Var. 21° E.

Ascend along top of main divide.

38.00 Botton of gap and head of Devil's canyon
bears SW. and also the south end of
Meadow and head of west fork of the
Satas which flows N. Ascend gradually.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground with mound of earth 2 ft. high $4\frac{1}{2}$
ft. base around it for $\frac{1}{2}$ mile cor. marked
 $\frac{1}{2}$ M. on E. face from which bears

A black pine 10 ins. diam. N. 25° W. 25 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

A black pine 10 ins. diam. S. 60° W. 31 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

58.00 Intersect line bet. secs. 17 and 20 8.84 chs.
east of cor. to secs. 18, 17, 19 and 20 T. 6
N. Rg. 16 E. which is a stake and mound
of stone from which bears

Yakima Indian Resérvation.

A pine 20 ins. diam. N. 55° W. 71 lks. dist.

Marked S. 17 T. 6 N.

A pine 12 ins. diam. S. 5° E. 78 lks. dist.

Marked S. 20 R. 17 E.

A pine 12 ins. diam. S. 48° E. 78 lks. dist.

Marked S. 19.

- 59.50 Set fir post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A black pine 12 ins. diam. S. $24\frac{1}{2}^{\circ}$ W. 49 lks. dist.

Marked B. T.

Thence N. $15\frac{1}{2}^{\circ}$ W.

Var. $20\frac{1}{4}^{\circ}$ E.

Change caused by local attraction.

Ascend gradually.

- 80.00 Set basalt stone 30x24x18 ins. 24 ins. in the ground for Fifty-first Mile cor. and also a post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground, both marked 51 M. on SE. face Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, from which bears

A black pine 12 ins. diam. N. 25° E. 73 lks. dist.

Marked Y. I. R. 51 M. B. T.

Land mountains; timber fir, spruce and black pine; light growth of grass; soil rocky 3rd rate. From this cor. a low ridge of hills bear in a southwesterly direction.

.....
Thence N. $15\frac{1}{2}^{\circ}$ W. on Fifty-second mile.

Var. $20\frac{1}{4}^{\circ}$ E.

Ascend along top of divide.

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Yakima Indian Reservation.

- 7.40 Intersect line bet. secs. 17 and 18 27.48 chs.
N. of cor. of secs. 17, 18, 19 and 20.
- 10.76 Top of high butte the highest point on the
south boundary. Set post 6 ins. sq. $5\frac{1}{2}$
ft. long 2 ft. in the ground and raised a
mound of stones $2\frac{1}{2}$ ft. high 5 ft. base
around post from which bears
A black pine 15 ins. diam. S. 60° E. 35 lks.
dist.

Marked Y. I. R. B. T.

Thence I ran N. $39\frac{1}{2}^\circ$ W.

Var. $21^\circ 32'$ E.

Change caused by local attraction.

Descend and enter dense black pines.

- 30.00 Enter dense black pines.
- 40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on
SE. face from which bears
A black pine 18 ins. diam. N. 31° W. 2 lks.
dist.

Marked B. T.

A black pine 10 ins. diam. S. 80° W. 8 lks.
dist.

Marked B. T.

- 46.00 Leave timber bears N. and S. and ascend
bald ridge.
- 77.10 Set basalt stone $14 \times 12 \times 4$ ins. 10 ins. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of stones 2
ft. high $4\frac{1}{2}$ ft. base alongside.

Oct. 2, 1890.

Thence I run N. $1^{\circ} 30'$ W.

Var. $231\frac{1}{2}^{\circ}$ E.

At 7 A. M. Oct. 3rd, by a back sight on line run yesterday I find the magnetic bearing

Yakima Indian Reservation.

to be S. $63^{\circ} 00'$ E.

Var. $231\frac{1}{2}^{\circ}$ E.

Change caused by local attraction.

78.00 Intersect line bet. secs. 18 and 7 20 lks. E.

Of mound of stone and $\frac{1}{4}$ sec. cor.

80.00 Set basalt stone 36x24x15 ins. 28 ins. in the ground for Fifty-second mile cor. marked 52 M. on S. face Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised a mound of stone $2\frac{1}{2}$ ft. high 5 ft. base alongside.

Land mountainous; black pine scattering fir and spruce 46 chs.; bal. open prairie on ridge; soil light loam stony in places 2nd rate fair growth of bunch and pine grass.

Oct. 3, 1890.

.....
At 7 A. M. Oct. 4, 1890, by a back sight on line run yesterday I find the Magnetic bearing to be S. $25^{\circ} 03'$ E. being an increase of $3'$ by diurnal change.

Var. $23^{\circ} 33'$ E.

Mean declination $23^{\circ} 30'$ E.

Thence I run N. $1^{\circ} 30'$ W. on Fifty-third mile.

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Var. 23° 03' E.

- 10.00 Set a basalt stone 14x12x6 ins. 10 ins. in the ground marked Y. I. R. on side facing the reservation and raised a mound of stone 2 ft. high 4½ ft. base alongside.

Thence I run N. 13° 45' West.

Var. 20° 20' E.

Change caused by local attraction.

Along top of open ridge.

Yakima Indian Reservation.

- 40.00 Set basalt stone 14x10x8 ins. 10 ins. in the ground for ½ mile cor. marked ½ M. on SE. face and raised mound of stone 2½ ft. high 5 ft. base alongside.

- 80.00 Set post 6 ins. sq. 5½ ft. long 2 ft. in the ground for Fifty-third mile cor. marked 53 M. on SE. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890; dug pits 24x18x12 ins. lengthwise on line each side of post ft. dist. and at right angles on the reservation and on Public land raised mound of earth and stone 2½ ft. high 5 ft. base around post from which bears

A black pine 18 ins. diam. N. 4° 45' W. 253 lks. dist.

Marked Y. I. R. 53 M. B. T.

No other trees within limits.

Land rolling ridge. No timber on top.

Soil light loamy stony in places 2nd rate good growth of bunch grass.

.....
Thence N. 14° 15' W. on Fifty-fourth mile.

Var. $20^{\circ} 20' E.$

Along top of main divide.

- .50 Intersect line bet. secs. 6 and 7 17 chs. W.
of $\frac{1}{4}$ sec. cor. which was a post and mound
of stone.
- 3.00 Enter dense black pine bears E. and W.
- 12.00 Set post 6 ins. sq. 2 ft. in the ground marked
Y. I. R. on side facing reservation and
raised mound of earth 2 ft. high $4\frac{1}{2}$ ft.
base around post.

Thence I run N. $20\frac{1}{2}^{\circ} E.$

Var. $20\frac{1}{2}^{\circ} E.$

Yakima Indian Reservation.

Change caused by local attraction.

- 29.30 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of earth 2
ft. high $4\frac{1}{2}$ ft. base alongside.

Thence N. $11\frac{1}{2}^{\circ} W.$

Var. $20\frac{1}{2}^{\circ} E.$

- 40.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground
for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SE.
face; raised mound of earth 2 ft. high $4\frac{1}{2}$
ft. base around post, from which bears
A black pine 10 ins. diam. S. $8^{\circ} E.$ 58 lks.
dist.
- 42.50 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground
marked Y. I. R. on side facing the reserva-
tion and raised mound of earth 2 ft. high
 $4\frac{1}{2}$ ft. base around post.

Thence I run N. $15\frac{1}{2}^{\circ} E.$

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Var. $20\frac{1}{2}^{\circ}$ E.

80.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for Fifty-fourth mile cor. marked 54 M. on S. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised a mound of earth $2\frac{1}{2}$ ft. high, 5 ft. base around post from which bears

A black pine 12 ins. diam. S. $77\frac{1}{2}^{\circ}$ W. 3 lks. dist.

Marked 54 M. 1890 B. T.

A black pine 12 ins. diam. S. $57\frac{1}{2}^{\circ}$ E. 21 lks. dist.

Marked Y. I. R. 54 M. B. T.

Land rolling mountain top; dense growth of black pine soil light loam 2nd rate light growth of bunch and pine grass.

.....
Yakima Indian Reservation.

Thence N. $15\frac{1}{2}^{\circ}$ E. on Fifty-fifth mile.

Var. $20\frac{1}{2}^{\circ}$ E.

Along top of dividè.

3.25 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post. $\frac{1}{4}$ sec. cor. bet. secs. 6 and 31 bears 9 chs. E.

Thence I run N. 2' W.

Var. $20\frac{1}{2}^{\circ}$ E.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on S. face and raised mound of earth 2 ft. high

4½ ft. base around post from which bears
A pine 6 ins. diam. S. 33½° E. 16 lks. dist.

Marked ½ M. B. T.

A pine 6 ins. diam. N. 51° W. 6 lks. dist.

Marked ½ M. B. T.

Oct. 4, 1890.

At 7 A. M. Oct. 5, 1890, by a back sight on
line run yesterday I find its magnetic
bearing to be S. 22° 33' E. being an increase
of 3' by diurnal change.

Var. 20° 33' E.

Mean declination 20° 30' E.

Thence N. 2° W.

Var. 20° 33' E.

58.80 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground
for angle point marked Y. I. R. on side
facing the reservation and raised mound of
earth 2 ft. high 4½ ft. base around post
from which bears

A pine 10 ins. diam. N. 41° E. 24 lks. dist.

Marked Y. I. R. B. T.

Yakima Indian Reservation.

Thence N. 65° W.

Var. 20° 33' E.

80.00 Set post 8 ins. sq. 5 ft. long, 2 ft. in the
ground for Fifty-fifth mile cor. marked 55
M. on SE. face, Y. I. R. on side facing the
reservation and on opposite side U. S. P.
L. 1890. Also set burnt granite 30x30x10
ins. 27 ins. in the ground marked same as
post from which bears

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A black pine 12 ins. diam. N. $56\frac{1}{4}^{\circ}$ E. 132 lks. dist.

Marked Y. I. R. 55 M. B. T.

A black pine 12 ins. diam. S. $53\frac{1}{2}^{\circ}$ E. 6 lks. dist.

Marked 55 M. 1890 B. T.

A black pine 18 ins. diam. S. $68\frac{1}{2}^{\circ}$ W. 22 lks. dist.

Marked 55 M. 1890 B. T.

A black pine 6 ins. diam. N. 12° W. 82 lks. dist.

Marked Y. I. R. 55 M. B. T.

Land mountainous; dense black pine timber; scattering mountain ash; light growth of bunch grass soil loam 2d rate.

Thence I run N. 65° W. on Fifty-sixth mile.

Var. 20° 33' E.

Descend along top of divide.

3.00 Leave timber bears S. and NE.

6.13 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for angle point marked Y. I. R. on side facing the reservation and raised mound of earth and stone 2 ft. high $4\frac{1}{2}$ ft. base around post.

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Thence I run N. 87° W.

Var. 20° 40' E.

Change caused by local attraction.

Descend gradually along open ridge.

27.00 Trail bears NE. and SW. from Fort Simcoe to Goldendale.

32.00 Ascend gradually.

- 40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground and basalt stone $15 \times 12 \times 10$ ins. 10 ins. in the ground for $\frac{1}{2}$ mile cor. both marked $\frac{1}{2}$ M. on E. face; dug pits $24 \times 18 \times 12$ ins. lengthwise on line on each side of cor. 6 ft. dist. and raised mound of earth and stone 3 ft. high 5 ft. base alongside.

Ascend Stagman butte.

- 47.78 Top of Stagman butte.

Set basalt stone $36 \times 28 \times 5$ ins. 28 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone $2\frac{1}{2}$ ft. high 5 ft. base alongside.

Thence N. $73\frac{3}{4}^{\circ}$ W.

Var. $25^{\circ} 15'$ E.

Change caused by basaltic iron rocks.

- 67.00 Enter scattering fir and black pine timber and descend bluff

Var. has returned to 21° E.

- 72.00 Foot of bluff. There is a spring about 8 chs. E. flows NE. is the headwaters of Loggie Creek, which flows into the west fork of the Satas.

- 80.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the ground for Fifty-sixth mile cor. marked 56 M. on S. face, Y. I. R. on side facing the reservation and U. S. P. L. 1890 on opposite side and raised a mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

Yakima Indian Reservation.

A black pine 18 ins. diam. N. $21\frac{1}{2}^{\circ}$ E. 47 lks. dist.

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Marked Y. I. R. 56 M. B. T.

A black pine 12 ins. diam. S. $50\frac{3}{4}^{\circ}$ W. 114
lks. dist.

Marked 1890 56 M. B. T.

Land rolling mountaintop; scattering black
pine fir and spruce 18 chs. bal. open; soil
loam stony in places fair 2nd rate; good
growth of bunch and pine grass.

Oct. 5, 1890.

.....
At 8 A. M. Oct. 6th, by a back sight on line
run yesterday I find the magnetic bearing
to be S. $28^{\circ} 03'$ E. Variation at present
 $20^{\circ} 18'$ E.; subtracting $3'$ for diurnal
changes gives mean declination $20^{\circ} 15'$ E.
Change caused by local attraction.
Thence I run N. $7^{\circ} 45'$ W. on Fifty-seventh
mile.

Var. $20^{\circ} 18'$ E.

Along top of divide.

22.30 Set basalt stone 24x18x15 ins. 18 ins. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of stone 2 ft.
high $4\frac{1}{2}$ ft. base alongside from which
bears

A black pine 15 ins. diam. S. $15\frac{1}{2}^{\circ}$ E. 28 lks.
dist.

Marked Y. I. R. B. T.

Thence I run N. $27^{\circ} 45'$ W.

Var. $20^{\circ} 18'$ E.

40.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground

Yakima Indian Reservation.

for $\frac{1}{2}$ mile cor.; dug pits 24x18x12 ins. lengthwise on line each side of post 6 ft. dist. Post marked $\frac{1}{2}$ M. on SE. face, from which bears

A black pine 15 ins. diam. S. 35° W. 85 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

No other trees within limits.

80.00 Set a post 6 ins. sq. 5 ft. long 2 ft. in the ground for fifty-seventh mile cor. and basalt stone 30x30x15 ins. 24 ins. in the ground, both marked 57 M. on SE. faces and Y. I. R. on reservation side and on opposite side U. S. P. L. 1890; raised mound of stone 3 ft. high $5\frac{1}{2}$ ft. base alongside from which bears

A black pine 10 ins. diam. N. $32^{\circ} 45'$ E. 295 lks. dist.

Marked Y. I. R. 57 M. B. T.

A black pine 12 ins. diam. S. $28^{\circ} 45'$ E. 135 lks. dist.

Marked Y. I. R. 57 M. B. T.

A black pine 10 ins. diam. S. 44° W. 98 lks. dist.

Marked 57 M. 1890 B. T.

A black pine 15 ins. diam. N. $47\frac{1}{2}^{\circ}$ W. 207 lks. dist.

Marked 57 M. 1890 B. T.

Land rolling mountaintop; scattering black

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pine; good growth of bunch grass and pine grass; soil loam good 2nd rate.

.....
Thence I run N. 45° 45' W. on Fifty-eighth mile.

Yakima Indian Reservation.

Var. 22½° E.

At 10 A. M. variation has increased by 2° 12' the change caused by local attraction.

Along top of divide.

- 34.74 Intersect black pine 20 ins. diam. marked Y. I. R. on the side facing the reservation; blazed the tree each side on line.

Potato butte bears W. about 10 chs.

Thence I run N. 9° 15' E.

Var. 20¼° E.

At 3 P. M. var. decreasing to mean declination,

- 36.20 Intersect a black pine 20 ins. diam. which I marked Y. I. R. on side facing the reservation and blaze the tree each side on line.

Thence I ran N. 21° W.

Var. 20¼° E.

Descend gradually on top of divide between the waters of the Satas and those flowing into the Klickitat.

- 40.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the ground and basalt stone 36x30x18 ins. 28 ins. in the ground for ½ mile cor. both marked ½ M. on SE. faces and raised mound of stone 2½ ft. high 5 ft. base alongside from which bears

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A black pine 12 ins. diam. N. $81\frac{3}{4}^{\circ}$ E. 61 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

Black pine 12 ins. diam. N. 82° W. 75 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

80.00 Set lava stone 40x30x30 ins. 30 ins. in the
ground for Fifty-eighth mile corner
marked 58 M. on SE. face, Y. I. R. on
side facing the reservation and on oppo-
site side U. S. P. L. 1890; raised mound
Yakima Indian Reservation.
of stone $2\frac{1}{2}$ ft. high 5 ft. base alongside,
from which bears

A yellow pine 48 ins. diam. N. 15° E. 93 lks.
dist.

Marked Y. I. R. 58 M. B. T.

A black pine 15 ins. diam. S. 89° E. 99 lks.
dist.

Marked Y. I. R. 58 M. B. T.

A black pine 20 ins. diam. S. 74° W. 85 lks.
dist.

Marked 58 M. 1890 B. T.

A black pine 20 ins. diam. N. $79\frac{1}{4}^{\circ}$ W. 101
lks. dist.

Marked 58 M. 1890 B. T.

Land mountainous and rolling.

Scattering yellow and black pine timber;
good growth of pine and bunch grass; soil
loam good 2d rate.

Oct. 6, 1890.

.....

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At 7 A. M. Oct. 7th, by back sight on line run yesterday I find its magnetic bearing to be S. $42^{\circ} 03'$ E. Variation $21^{\circ} 03'$ E. being an increase of $48'$ by local attraction. Thence I run N. 21° W. on Fifty-ninth mile. Var. $21^{\circ} 03'$ E.

Along top of divide over rolling land the Old Military Wagon Road from Ft. Simcoe to The Dalles is about $\frac{1}{2}$ mile west bears N. and S.

- 6.26 Set black pine post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post.

Yakima Indian Reservation.

Thence N. $20^{\circ} 15'$ E.

Var. $20^{\circ} 15'$ E.

Var. decreasing to mean declination.

Through scattering yellow pine timber of good quality.

- 24.50 Intersect yellow pine 28 ins. diam.

- 40.00 Set post 8 ins. sq. 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW. face and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post, from which bears

A black pine 10 ins. diam. S. 89° E. 22 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A black pine 15 ins. diam. N. 52° W. 102 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. $17\frac{1}{4}^{\circ}$ E.

Var. $20\frac{1}{4}^{\circ}$ E.

- 59.57 Set iron stone 24x20x8 ins. 18 ins. in the ground marked Y. I. R. on side facing the reservation from which bears
A black pine 18 ins. diam. N. $11\frac{1}{4}^{\circ}$ E. 52 lks. dist.

Marked Y. I. R. B. T.

- A black pine 18 ins. diam. S. $51^{\circ} 40'$ E. 50 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 56° W.

Var. $20\frac{1}{4}^{\circ}$ E.

- 80.00 Set post 6 ins. sq. 5 ft. long, 2 ft. in the ground for Fifty-ninth mile cor. marked 59 M. on SE. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post, from which bears

Yakima Indian Reservation.

- A yellow pine 48 ins. diam. N. 44° E. 97 lks. dist.

Marked Y. I. R. 59 M. B. T.

- A black pine 8 ins. diam. S. $41\frac{1}{4}^{\circ}$ W. 36 lks. dist.

Marked 59 M. 1890 B. T.

- A yellow pine 36 ins. diam. S. 82° W. 142 lks. dist.

Marked 59 M. 1890 B. T.

No other trees within limits.

Land rolling sand loam 2d rate.

Scattering yellow pine good saw timber and

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small black pine; good growth of pine and bunch grass. A small creek heads about $\frac{1}{2}$ mile east and flows N. parallel to the general course of the divide and enters into one of the tributaries of the Satas,

.....
Thence N. 56° W. on Sixtieth mile.

Var. $20\frac{1}{4}^{\circ}$ E.

Descend gradually along top of divide.

- 11.47 Intersect yellow pine 30 ins. diam., marked Y. I. R. on side facing the reservation for angle cor. and blaze tree on each side on line.

Thence I run N. $11\frac{1}{2}^{\circ}$ E.

Var. $20\frac{1}{4}^{\circ}$ E.

- 26.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

A yellow pine 30 ins. diam. N. $48\frac{3}{4}^{\circ}$ E. 40 lks. dist.

Marked Y. I. R. B. T.

A yellow pine 28 ins. diam. S. 81° W. 14 lks. dist.

Marked B. T.

Thence I run N. 70° E.

Yakima Indian Reservation.

Var. $20\frac{1}{4}^{\circ}$ E.

- 40.00 Set a post 6 ins. sq. 5 ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW. face and raised mound of earth 2 ft.

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high $4\frac{1}{2}$ ft. base alongside from which bears

A black pine 18 ins. diam. N. 50° E. 8 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A yellow pine 28 ins. diam. S. 28° W. 64 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

47.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for angle point marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

A black pine 18 ins. diam. S. 60° W. 30 lks. dist.

Marked B. T.

Thence I run north.

Var. $20^{\circ} 40'$ E.

Local attraction here.

80.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for Sixtieth mile cor. marked 60 M. on S. face, Y. I. R. on side facing the reservation, and on opposite side U. S. P. L. 1890, raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post, from which bears
A black pine 12 ins. diam. N. $78\frac{1}{2}^{\circ}$ E. 78 lks. dist.

Marked Y. I. R. 60 M. B. T.

A black pine 12 ins. diam. S. 31° E. 115 lks. dist.

Marked Y. I. R. 60 M. B. T.

A yellow pine 30 ins. diam. N. 67° W. 54 lks. dist.

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Marked 60 M. 1890 B. T.

Land rolling ridge; scattering yellow and Yakima Indian Reservation.

black pine timber, tamarack and fir; yellow pine good saw timber; good growth of bunch and pine grass; soil good sandy loam 2d rate; no underbrush.

I

Oct. 7, 1890.

.....
At 7 A. M. Oct. 8th, by a back sight on line run yesterday I find its magnetic bearing to be S. 20° E. 48'; variation at this time 20° 48' E. Change caused by local attraction.

Thence I run N. $40\frac{1}{2}^{\circ}$ W. on Sixty-first mile.

Var. 20° 48' E.

Along top of divide descending gradually.

29.00 Set post 6 ins. sq. 5 ft. long, 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A yellow pine 30 ins. diam. N. 60° E. 68 lks. dist.

Marked Y. I. R. B. T.

Thence I run north.

Var. 20° 48' E.

40.00 Set basalt stone 16x12x10 ins. 12 ins. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M on S. face and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside *from bears*

A yellow pine 20 ins. diam. N. 71° E. 45 lks. dist.

Marked $1\frac{1}{2}$ M. B. T.

No other trees within limits.

- 68.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post from which brs.
A pine 28 ins. diam. N. $38\frac{1}{2}^{\circ}$ E. 26 lks. dist.

Yakima Indian Reservation.

Marked Y. I. R. B. T.

Thence I run N. $36\frac{1}{2}^{\circ}$ E.

Var. 20° 48' E.

- 80.00 Set basalt stone 18x16x12 ins. 12 ins. in the ground for Sixty-first mile cor. marked 61 M. on SW. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890; raised mound of earth and stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A pine 18 ins. diam. S. 86° E. 29 lks. dist.

Marked Y. I. R. 61 M. B. T.

A pine 24 ins. diam. S. 26° W. 58 lks. dist.

Marked Y. I. R. 61 M. B. T.

Land rolling open pine and scattering fir and tamarack timber. Yellow pine timber 1st class for milling good growth of bunch and pine grass; soil sandy loam 2d rate.

.....
Thence I run N. $51\frac{1}{2}^{\circ}$ E. on Sixty-second mile.

Var. 20° 48' E.

Through this locality it is difficult to determine the true divide being rolling land and

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soil very porous, there being no well-defined watercourses, so I choose the highest ground between the waters of the Satas and those flowing SW. into the Klickitat.

- 12.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post.

Thence I run N. $11\frac{1}{2}^{\circ}$ E.

Var. $20\frac{3}{4}^{\circ}$ E.

Yakima Indian Reservation.

Variation decreased 3' by diurnal change 5 P. M.

- 29.10 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post.

Thence I run N. $13\frac{1}{2}^{\circ}$ N.

Var. $20\frac{3}{4}^{\circ}$ E.

- 40.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on S. face and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

A yellow pine 18 ins. diam. N. 77° W. 82 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A yellow pine 30 ins. diam. N. 33° E. 94 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

*Oct. 8, 1890.

At 6 A. M., October 9th, by a back sight on line run yesterday I find the magnetic

bearing to be S. $34^{\circ} 17'$ E. Variation at this time $20^{\circ} 47'$ E. subtracting $2'$ for diurnal change gives mean declination $20^{\circ} 45'$ E.

Thence I continue on same course.

- 80.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for sixty-second mile cor. marked 62 M. on S. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears A yellow pine 24 ins. diam. N. $29\frac{1}{2}^{\circ}$ E. 4 lks. dist.

Marked Y. I. R. 62 M. B. T.

- A yellow pine 24 ins. diam. S. 67° W. 78 lks. dist.

Marked 62 M. 1890 B. T.

Yakima Indian Reservation.

- A yellow pine 26 ins. diam. N. 61° W. 91 lks. dist.

Marked 62 M. 1890 B. T.

Land rolling; good yellow pine saw timber; good growth of bunch and pine grass; soil sandy 2d rate.

.....
Thence I run N. 21° E. on Sixty-third mile.

Var. $20^{\circ} 47'$ E.

Over rolling land on divide.

- 40.00 Set post 6 ins. sq. 5 ft. long. 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW. face and raised a mound of stone 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

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A yellow pine 36 ins. diam. S. 2° W. 58 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A yellow pine 12 ins. diam. N. 23° W. 52 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

52.90 Intersect yellow pine 36 ins. diam. which I marked Y. I. R. on side facing the reservation and blazed both sides of tree on line. Thence I run N. 6° W.

Var. 20° E.

Change caused by local attraction.

74.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post.

Thence I run N. 39° E.

Var. 21° E.

80.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for Sixty-third mile cor. marked 63 M. on SW. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base around post from which

Yakima Indian Reservation.

bears

A yellow pine 12 ins. diam. N. $35\frac{1}{2}$ ° E. 51 lks. dist.

Marked 63 M. Y. I. R. B. T.

A yellow pine 12 ins. diam. S. 74° E. 79 lks. dist.

Marked Y. I. R. 63 M. B. T.

A yellow pine 30 ins. diam. N. 64° W. 141
lks. dist.

Marked 63 M. 1890 B. T.

Land rolling; good yellow pine saw timber,
scattering firs; good growth of bunch and
pine grass; soil sandy 2d rate.

Oct. 9th, 1890.

On the night of Oct. 9th I take an observa-
tion on Polaris at 7h. 04m. local mean time
"In accordance with instructions con-
tained in the Manual." I find the mag-
netic bearing of the star to be N. 18°
 $55'$ W. I then drove stake 3 chs. N. on
line thus determined.

Local mean time observation Oct. 9th 7h.
04m.

Local mean time of U. S. of Polaris

Oct. 1st, as per (table 1).....	12	35.7
Reduction for 7 days $3.93=$	27.5m..	27.5

Local mean time U. C. Polaris Oct.

8th.....	12	08.2
----------	----	------

Which taken from time of observa-

tion leaves hour angle of Polaris, 5h. 00m.

Azimuth of Polaris for Lat. 46° .. $1^{\circ} 47'$ W.

North end of needle.....	$18^{\circ} 55'$	E.
--------------------------	------------------	----

The sum is the Variation at this

time.....	$20^{\circ} 47'$	E.
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At 6 A. M. Oct. 10th I set my instrument on
line established last night and find the

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magnetic bearing to be N. $18^{\circ} 57'$ W. and
the Variation $20^{\circ} 47'$ E.

Thence I run N. 39° E. on Sixty-fourth mile.
Var. $20^{\circ} 49'$ E.

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Along top of main divide.

- 18.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of earth 2
ft. high $4\frac{1}{2}$ ft. base around post from
which bears

A pine 24 ins. diam. S. 31° E. 32 lks. dist.

Marked B. T.

A pine 30 ins. diam. N. 74° E. 53 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 3° W.

Var. $20^{\circ} 49'$ E.

5 ft. long.

- 40.00 Set post 8 ins. sq. 2 ft. in the ground for $\frac{1}{2}$
mile cor. marked $\frac{1}{2}$ M. on S. face and
raised mound of stone 2 ft. high $4\frac{1}{2}$ ft.
base around post, from which bears

A pine 28 ins. diam. S. 47° E. 54 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 28 ins. diam. N. $33\frac{1}{2}^{\circ}$ W. 73 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

- 43.10 Center of Old Military Wagon Road from
Fort Simcoe to the Dalles bears NE. and
SW.

- 50.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground
marked Y. I. R. on side facing the reser-
vation and raised mound of stone 2 ft. high

4½ ft. base around post from which brs.

A pine 30 ins. diam. S. 68° W. 57 lks. dist.

Marked B. T.

A pine 30 ins. diam. S. 35° E. 58 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 13½° E.

Yakima Indian Reservation.

Var. 20° 46' E.

10 A. M. Variation has decreased 3' by diurnal change.

68.80 Set post 8 ins. sq. 5 ft. long. 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high 4½ ft. base around it from which bears

A pine 24 ins. diam. N. 47½° E. 45 lks. dist.

Marked Y. I. R. B. T.

A pine 30 ins. diam. S. 50° W. 58 lks. dist.

Marked B. T.

Thence I run N. 22½° W.

Var. 24° 40' E.

Some local attraction here.

80.00 Set post 10 ins. sq. 5 ft. long 2 ft. in the ground and set basalt stone 24x18x10 ins. 18 ins. in the ground for Sixty-fourth mile corner, both marked 64 M. on SE. face and Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890; raised mound of stone 2½ ft. high 5 ft. base alongside from which bears

A pine 20 ins. diam. N. 8° E. 53 lks. dist.

Marked Y. I. R. 64 M. B. T.

A pine 24 ins. diam. S. $41\frac{1}{4}^{\circ}$ E. 86 lks. dist.

Marked Y. I. R. 64 M. B. T.

A pine 24 ins. diam. S. 22° W. 8 lks. dist.

Marked 64 M. 1890 B. T.

Land rolling; open yellow pine timber excellent saw timber; soil sandy loam 2d rate; good growth of bunch and pine grass.

.....
Thence I run N. $22\frac{1}{2}^{\circ}$ W. on Sixty-fifth mile.

Var. $20^{\circ} 47'$ E.

Variation has returned to its mean declination.

Yakima Indian Reservation.

Along top of divide over rolling land.

- 14.06 Set basalt stone 20x18x18 ins. 16 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone $2\frac{1}{2}$ ft. high 5 ft. base alongside from which bears

A pine 24 ins. diam. S. $52\frac{3}{4}^{\circ}$ W. 12 lks. dist.

Marked B. T.

Thence I run N. 3° E.

Var. $20^{\circ} 44'$ E.

Noon variation decreased 3' by diurnal change.

Ascend small butte.

- 24.00 Top about 60 ft. high.

- 26.50 Set post 6 ins. sq. 5 ft. long 2 feet in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2

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ft. high $4\frac{1}{2}$ ft. base around it from which
brs.

A pine 30 ins. diam. N. 70° E. 40 lks. dist.

Marked Y. I. R. B. T.

A pine 6 ins. diam. N. 70° W. 68 lks. dist.

Marked B. T.

Thence I run $91\frac{1}{2}^{\circ}$ W.

Var. $20\frac{3}{4}^{\circ}$ E.

An increase of 1' by diurnal change.

Descend butte.

35.00 Foot of butte bears SE. and W.

Over rolling land.

40.00 Set basalt stone 18x15x12 ins. 12 ins. in the
ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on
SE. face and raised mound of stone 2 ft.
high $4\frac{1}{2}$ ft. base alongside from which
brs.

A black pine 20 ins. diam. N. 66° E. 42 lks.
dist.

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Marked $\frac{1}{2}$ M. B. T.

A yellow pine 28 ins. diam. S. $88\frac{1}{2}^{\circ}$ W. 111
lks. dist.

Marked $\frac{1}{2}$ M. B. T.

44.80 Set post 8 ins. sq. 5 ft. long 2 ft. in the
ground marked Y. I. R. on side facing
reservation and raise mound of earth 2 ft.
high $4\frac{1}{2}$ ft. base around post from which
brs.

A pine 28 ins. diam. N. $91\frac{1}{2}^{\circ}$ E. 42 lks. dist.

Marked Y. I. R. B. T.

A pine 20 ins. diam. N. $49\frac{1}{2}^{\circ}$ W; 47 lks. dist.

Marked B. T.

Thence I run N. 12° W.

Var. $20^{\circ} 47'$ E.

Variation increased 2' by diurnal change.

- 54.70 Intersect yellow pine 30 ins. diam. which I marked Y. I. R. on side facing the reservation and blazed on line each side of tree with 3 notches.

Oct. 10, 1890.

At 6 A. M. Oct. 11th, by a back sight on line run yesterday I find the magnetic bearing to be S. $32^{\circ} 45'$ E.

Local attraction here.

Thence I run N. $11\frac{1}{4}^{\circ}$ W.

Var. $20\frac{3}{4}^{\circ}$ E.

Over rolling land.

- 74.40 Set basalt stone 24x20x15 ins. 18 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears.

A pine 24 ins. diam. N. $8\frac{1}{4}^{\circ}$ E. 30 lks. dist.

Marked Y. I. R. B. T.

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A pine 18 ins. diam. S. 63° W. 50 lks. dist.

Marked B. T.

Thence I run N. $59\frac{1}{4}^{\circ}$ W.

Var. $21\frac{1}{4}^{\circ}$ E.

Change caused by local attraction.

- 78.00 Enter small prairie bears SW. and NE.

- 80.00 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground with basalt stone 24x18x15 ins. 18

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ins. in the ground for Sixty-fifth mile corner both marked 65 M. on SE. face Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 from which bears

A black pine 24 ins. diam. S. $81\frac{1}{2}^{\circ}$ E. 97 lks. dist.

Y. I. R. 65 M. B. T.

A pine 18 ins. diam. S. 89° W. 93 lks. dist.

Marked 65 M. 1890 B. T.

An aspen 6 ins. diam. N. 26° W. 84 lks. dist.

Marked Y. I. R. 65 M. B. T.

No other trees within limits.

Land 1st half rolling; bal. nearly level; soil sandy in patches stony fair 2d rate; good yellow pine 1st class for milling 80 chs.; good growth of pine and some bunch grass.

This corner is in small neck of prairie which extends SW. about $\frac{1}{2}$ mile and east $\frac{1}{2}$ mile to prairie of about 2000 acres in extent called Alkali prairie. This cor. is also on the true divide; during the rainy season the water from this prairie flows SW. into the Klickitat and east through Alkali prairie into the west fork of what is known as dry creek. The land in these prairies is 1st class.

.....
Yakima Indian Reservation.

Thence I run N. $38\frac{1}{4}^{\circ}$ W. on Sixty-sixth mile.

Var. $21\frac{1}{2}^{\circ}$ E.

Along top of true divide between the waters of the Satas and those flowing to the Klickitat and Columbia rivers.

3.00 Enter dense thicket of small black pine NE. and SW.

6.00 Leave thicket and ascend gradually on top of ridge, enter open woods of yellow pine timber.

12.50 Set post 6 ins. sq. $5\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone $2\frac{1}{2}$ ft. high 5 ft. base around post from which bears.

A pine 28 ins. diam. S. 65° E. 46 lks. dist.

Marked Y. I. R. B. T.

A black pine 10 ins. diam. N. 6° W. 15 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $85\frac{3}{4}^{\circ}$ W.

Var. 20° $47'$ E.

Var. returned to mean declination.

Ascend gradually.

28.16 Set post 6 ins. sq. $5\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth and stone 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

A yellow pine 36 ins. diam. N. $68\frac{3}{4}^{\circ}$ W. 76 lks. dist.

Marked B. T.

A yellow pine 30 ins. diam. S. 45° E. 85 lks. dist.

Marked B. T.

Thence I run N. $25\frac{1}{4}^{\circ}$ W.

Var. $20^{\circ} 47'$ E.

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Along top of ridge.

- 40.00 Set a post 6 ins. sq. $5\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ Mile cor. marked $\frac{1}{2}$ M. on SE. face and raised mound of earth 2 ft. (high) long $4\frac{1}{2}$ ft. base around post from which bears

A pine 24 ins. diam. S. $36\frac{1}{2}^{\circ}$ E. 27 lks. dist.
Marked $\frac{1}{2}$ M. B. T.

A pine 20 ins. diam. S. 37° W. 87 lks. dist.
Marked $\frac{1}{2}$ M. B. T.

- 65.83 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

A pine 24 ins. diam. S. 26° E. 22 lks. dist.
Marked B. T.

A pine 30 ins. diam. N. 26° W. 15 lks dist.
Marked Y. I. R. B. T.

Thence I run West.

Var. $20^{\circ} 47'$ E.

- 76.00 At this point the variation is 25° E. caused by iron rock.

- 80.00 Set post 10 ins. sq. $5\frac{1}{2}$ ft. long 2 ft. in the ground for Sixty-sixth mile cor. marked 66 M. on E. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of stone 2 ft.

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high $4\frac{1}{2}$ ft. base around post from which bears

A pine 20 ins. diam. N. 13° E. 26 lks. dist.

Marked Y. I. R. 66 M. B. T.

A pine 30 ins. diam. S. $33\frac{1}{4}^{\circ}$ E. 38 lks. dist.

Marked 66 M. 1890 B. T.

A pine 28 ins. diam. S. 45° W. 122 lks. dist.

Marked 66 M. 1890 B. T.

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A pine 18 ins. diam. N. $76\frac{1}{4}^{\circ}$ W. 20 lks. dist.

Marked 66 M. 1890 B. T.

Land gently rolling; top of broad ridge; a dry gulch $\frac{1}{2}$ mile east Course S. to 65th mile cor. drains into the Satas; dry gulch $\frac{1}{4}$ mile west course SW. drains into the Klickitat.

Good yellow pine timber will make 1st class lumber. Good growth of bunch and pine grass; 1st class grazing land; soil sandy loam stony in places 2d rate; agricultural land.

Oct. 11th.

.....
Oct. 12th, 7 A. M., by a back sight on line run yesterday I find the magnetic bearing to be N. $69^{\circ} 30'$ E. and variation $20\frac{1}{2}^{\circ}$ E. Change caused by local attraction.

Thence I run N. 38° W. on Sixty-seventh mile.

Var. $20\frac{1}{2}^{\circ}$ E.

Along top of divide which is a low broad rolling ridge about $\frac{1}{4}$ mile wide here.

- 10.00 Set basalt stone 20x12x12 ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which A pine 24 ins. diam. S. $63\frac{1}{4}^{\circ}$ E. 42 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $66\frac{3}{4}^{\circ}$ W.

Var. $20\frac{1}{2}^{\circ}$ E.

- 33.30 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation and raised mound of earth 2 ft. high

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$4\frac{1}{2}$ ft. base around post from which brs.

A pine 28 ins. diam. N. $85\frac{1}{2}^{\circ}$ E. 69 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $82\frac{1}{2}^{\circ}$ W.

Var. 22° E.

Change caused by local attraction.

- 40.00 Set a post 6 ins. sq. 5 ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on E. face from which bears

A pine 28 ins. diam. North 55 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 24 ins. diam. S. 28° E. 52 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run S. 72° W.

Var. 22° E.

- 60.00 Ascend butte variation decreasing to mean declination $20^{\circ} 47'$ E.

- 80.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the ground for Sixty-seventh mile cor. marked 67 M. on NE. face, Y. I. R. on side facing the

- reservation and on opposite side U. S. P. L. 1890; raised mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears

A pine 24 ins. diam. N. 60° E. 128 lks. dist.

Marked Y. I. R. 67 M. B. T.

A tamarack 12 ins. diam. S. 20° E. 115 lks. dist.

Marked 67 M. 1890 B. T.

A pine 28 ins. diam. S. 70° W. 72 lks. dist.

Marked Y. I. R. 67 M. B. T.

Land rolling ridge; good growth of yellow pine saw timber scattering tamarack and

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black pine of an inferior quality.

Pine and light growth of bunch grass; soil light sandy loam 2d rate.

Oct. 12, 1890.

.....
At 6 A. M. Oct. 13th, by a back sight on line run yesterday I find the magnetic bearing to be N. $51^{\circ} 30'$ E., the variation having returned to $20^{\circ} 30'$ E.

Thence S. 72° W. on Sixty-eighth mile.

Var. $20\frac{1}{2}^{\circ}$ E.

Ascend steep side of round butte.

- 5.53 Top of butte set ironstone $34 \times 18 \times 6$ ins. 26 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone $21\frac{1}{2}$ ft. high 5 ft. base alongside from which hrs.

A pine 28 ins. diam. S. 56 lks. dist.

Marked B. T.

A pine 28 ins. diam. N. $83\frac{1}{2}^{\circ}$ W. 51 lks. dist.

Marked B. T.

Top of butte about 200 ft. high.

Thence I run N. $19\frac{1}{4}^{\circ}$ W.

Var. 22° E.

At 9 A. M. var. increased $1^{\circ} 30'$ the change caused by local attraction.

Descend butte along top of main divide.

- 20.54 Set basalt stone 20x28x6 ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A fir 18 ins. diam. S. $82^{\circ} 30'$ E. 25 lks. dist.

Marked Y. I. R. B. T.

A balsam 8 ins. diam. S. 17° W. 33 lks. dist.

Marked B. T.

Thence I run M. $33\frac{1}{2}^{\circ}$ W.

Var. $20^{\circ} 47'$ E.

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Var. has returned to mean declination.

- 28.00 Foot of hill thence over rolling land.
- 39.38 Trail bears NE. and SW. from Topinish to the Klickitat river.
- 39.65 A pine 30 ins. diam.
- 40.00 Set a post 6 in. sq. 5 ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base around post from which bears
- A pine 18 ins. diam. S. 30° W. 37 lks. dist.

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Marked $\frac{1}{2}$ M. B. T.

A pine 30 ins. diam. N. $191\frac{1}{2}^{\circ}$ E. 81 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Ascend gradually towards a butte.

48.38 Yellow pine 28 ins. diam.

63.98 Top of round butte. Set basalt stone 20x15x
15 ins. 15 ins. in the ground marked Y. I.

R. on side facing the reservation and raised
mound of stone 2 ft. high $41\frac{1}{2}$ ft. base along-
side, from which bears

A pine 24 ins. diam. N. $82\frac{1}{2}^{\circ}$ E. 10 lks. dist.

Marked Y. I. R. B. T.

A pine 12 ins. diam. N. $88\frac{1}{2}^{\circ}$ W. 38 lks. dist.

Marked B. T.

Thence I run N. 21° W.

Var. 22° $21'$ E.

At 10 A. M. var. increased by 1° $34'$ the
change caused by local attraction.

68.00 Descend butte.

76.12 Intersect fir 60 ins. diam.

80.00 Foot of butte. Set post 6 ins. sq. 5 ft. long
2 ft. in the ground for Sixty-eight mile cor.
marked 68 M. on SE. face Y. I. R. on side

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facing the reservation and on opposite side
U. S. P. L. 1890—; raised mound of stone
2 ft. high $41\frac{1}{2}$ ft. base alongside from which
bears

A pine 28 ins. diam. N. $51\frac{1}{2}^{\circ}$ E. 43 lks. dist.

Marked Y. I. R. 68 M. B. T.

A pine 12 ins. diam. S. 12° E. 117 lks. dist.

Marked 68 M. 1890 B. T.

A pine 24 ins. diam. S. 84° W. 61 lks. dist.

Marked 68 M. 1890 B. T.

A pine 24 ins. diam. N. 14° W. 64 lks. dist.

Marked 68 M. 1890 B. T.

Land rolling and hilly; soil sandy loam stony
in places fair 2nd rate; good growth of
yellow pine saw timber 1st class with
scattering tamarack and firs.

Good growth of bunch and pine grass.

.....
Thence I run N. 8¼° W. on Sixty-ninth mile.

Var. 20° 47' E.

Var. has returned to mean declination.

Along top of divide land rolling.

15.88 Pine 24 ins. diam.

19.24 Trail bears SE. and NW. from Topinish to
the Klickitat river.

40.00 Set pine post 7 ins. sq. 5 ft. long 2 ft. in the
ground for ½ mile cor. marked ½ M. on S.
face from which bears

A pine 28 ins. diam. N. 46° 45' E. 47 lks. dist.

Marked ½ M. B. T.

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A pine 12 ins. diam. S. 31½° W. 45 lks. dist.

Marked ½ M. B. T.

Thence N. 31° 45' W.

Var. 20° 47' E.

Over rolling land along top of divide.

51.80 Trail bears E. and W. from Ft. Simcoe to Mt.
Adams.

A spur which is the divide between the Top-
inish and Satas rivers bears NE.

57.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground and raised a mound of earth 2 ft. high $4\frac{1}{2}$ ft. base around post marked Y. I. R. on side facing the reservation from which bears

A pine 24 ins. diam. N. 14° E. 10 lks. dist.

Marked Y. I. R. B. T.

A pine 28 ins. diam. S. $30\frac{1}{2}^{\circ}$ W. 26 lks. dist.

Marked B. T.

Oct. 13, 1890.

At 6 A. M. Oct. 14th, by a back sight on line run yesterday I find the magnetic bearing to be S. $52^{\circ} 18'$ E. and the Var. $20^{\circ} 33'$ E. Mean declination $20^{\circ} 30'$ E.

Thence I run N. $65\frac{1}{2}^{\circ}$ W.

Var. $20^{\circ} 33'$ E.

80.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for Sixty-ninth mile corner marked 69 M. on SE. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of earth $21\frac{1}{2}$ ft. high $5\frac{1}{2}$ ft. base around post from which bears

A pine 24 ins. diam. N. 74° E. 61 lks. dist.

Marked Y. I. R. 69 M. B. T.

A pine 20 ins. diam. S. 61° E. 87 lks. dist.

Marked 69 M. 1890 B. T.

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A pine 12 ins. diam. S. 10° W. 61 lks. dist.

Marked 69 M. 1890 B. T.

A pine 12 ins. diam. N. $64\frac{1}{2}^{\circ}$ W. 81 lks. dist.

Marked Y. I. R. 69 M. B. T.

Land gently rolling ridge; soil light sandy

loam fair 2nd rate for agricultural purposes; a good growth of yellow pine timber will make 1st class lumber; scattering tamarac and firs good growth of pine and bunch grass; a dry gulch about 10 chs. N. course West.

.....
Thence I ran N. $79\frac{1}{2}^{\circ}$ W. on Seventieth mile.

Var. $21\frac{1}{4}^{\circ}$ E.

Change caused by local attraction.

Descending gradually to the West.

Along top of divide land gently rolling.

- 22.63 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 28 ins. diam. N. $29\frac{1}{2}^{\circ}$ E. 71 lks. dist.

Marked Y. I. R. B. T.

A pine 24 ins. diam. S. $61^{\circ} 41'$ W. 34 lks. dist.

Marked B. T. Y. I. R.

Thence I run S. 52° W.

Var. $21\frac{1}{4}^{\circ}$ E.

- 32.73 Pine 26 ins. diam.

- 40.00 Set post 10 ins. sq. 5 ft. long 2 ft. in the ground and basalt $18 \times 15 \times 12$ ins. 12 ins. in the ground for $\frac{1}{2}$ mile cor. both marked $\frac{1}{2}$ M. and raised mound of stone $2\frac{1}{2}$ ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A pine 28 ins. diam. N. 52° E. 13 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

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A pine 28 ins. diam. S. 1° W. 51 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run S. $86^{\circ} 15'$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

Var. increased by local attraction.

Trail 40 lks. south bears E. and W. from Ft.
Simcoe to Mt. Adams.

42.29 Trail bears NW. and SE.

72.15 Pine 20 ins. diam.

80.00 Set iron stone $30 \times 24 \times 20$ ins. 24 ins. in the
ground for Seventieth mile cor. marked 70
M. on E. face Y. I. R. on side facing the
reservation and on opposite side U. S. P. L.
1890; and raised mound of stone $2\frac{1}{2}$ ft.
high 5 ft. base alongside. This cor. is in a
small dry lakebed about 100 ft. in diam. at
the east edge, from which bears

A pine 10 ins. diam. N. 22° E. 90 lks. dist.

Marked Y. I. R. 70 M. B. T.

A pine 15 ins. diam. S. 78° E. 24 lks. dist.

Marked 70 M. 1890 B. T.

A pine 20 ins. diam. N. 30° W. 71 lks. dist.

Marked Y. I. R. 70 M. B. T.

No other trees within limits.

Land rolling, soil light sandy loam; fair 2nd
rate good growth of pine and bunch grass;
1st class grazing; good growth of 1st class
yellow pine timber. A small stream about
 $\frac{1}{2}$ mile S. flows west.

Oct. 14th, 1890.

.....
At 7 A. M. Oct. 15th, by a back sight on line run yesterday I find the magnetic bearing to be N. $64^{\circ} 43'$ E. and the variation $21^{\circ} 32'$ E. Change caused by local attraction.

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Thence I run N. $77\frac{1}{2}^{\circ}$ W. on Seventy-first mile.

Var. $21^{\circ} 32'$ E.

Along top of divide descending gradually.

9.00 Trail bears NW. and SE.

28.33 Trail bears N. and S.

40.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on E. face from which bears

A pine 20 ins. diam. S. $25\frac{1}{4}^{\circ}$ E. 32 lks. dist.
Marked $\frac{1}{2}$ M. B. T.

A pine 50 ins. diam. N. 63° W. 32 lks. dist.
Marked $\frac{1}{2}$ M. B. T.

Thence I run N. 55° W.

Var. $21^{\circ} 32'$ E.

52.85 Pine 30 ins. diam.

55.83 Trail bears E. and W. and from Ft. Simcoe to Mt. Adams.

64.00 Set post 8 ins. sq. 2 ft. in the ground 5 ft. long marked Y. I. R. on side facing the reservation from which bears

A pine 28 ins. diam. N. 34° W. 90 lks. dist.
Marked Y. I. R. B. T.

A pine 20 ins. diam. S. $41\frac{1}{4}^{\circ}$ W. 44 lks. dist.
Marked B. T.

Thence I run N. 84° W.

Var. $21\frac{1}{2}^{\circ}$ E.

Var. has decreased 2' by diurnal change at noon.

80.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for Seventy-first mile cor. marked 71 M. on E. face Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890; from which bears

A pine 30 ins. diam. N. $45\frac{1}{2}^{\circ}$ E. 80 lks. dist.

Marked Y. I. R. 71 M. B. T.

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A pine 18 ins. diam. S. $38\frac{1}{2}^{\circ}$ E. 52 lks. dist.

Marked 71 M. 1890 B. T.

A pine 30 ins. diam. S. $16\frac{1}{2}^{\circ}$ W. 62 lks. dist.

Marked 71 M. 1890 B. T.

A pine 24 ins. diam. N. $15\frac{1}{2}^{\circ}$ W. 38 lks. dist.

Marked 71 M. Y. I. R. B. T.

Land rolling ridge; soil light sandy loam fair 2nd rate good growth of pine and bunch grass; 1st class yellow pine timber and scattering fir and tamarack.

.....
Thence I run N. $61\frac{1}{4}^{\circ}$ W. on Seventy-second mile.

Var. $21\frac{1}{2}^{\circ}$ E.

Along top of divide.

22.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 24 ins. diam. S. $52\frac{1}{2}^{\circ}$ E. 88 lks. dist.

Marked B. T.

A pine 36 ins. diam. N. 65° W. 57 lks. dist.

Marked Y. I. R. B. T.

Thence I run S. $87^{\circ} 45'$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

40.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the ground
for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on S. E. face
from which bears

A pine 24 ins. diam. N. $32\frac{1}{2}^{\circ}$ W. 31 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 24 ins. diam. S. 25° E. 44 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Oct. 15th.

On the night of Oct. 15th, 1890, I took obser-
vation on Polaris at 6h. 08m. solar mean
time "in accordance with instructions con-

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tained in Manuel"; I find the magnetic
bearing of the star to be N. $19^{\circ} 40'$ W. I
then drove a stake 2.50 chs. N. on the line
thus determined.

Local mean time of observation

Oct. 15th 6h 08m

Local mean time of U. C. of Pola-

ris Oct. 15, as per "table 1".....11 40.7

Which taken from time of obser-

vation leave hour angle 5 28.7

Azimuth, Lat. $46^{\circ} 12'$ $1^{\circ} 50'$ W.

North end of needle $19^{\circ} 40'$ E.

This sum is the variation $21^{\circ} 30'$ E.

At 6 A. M. Oct. 16th, 1890, I set my instru-
ment on line established last night and find

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the magnetic bearing to be N. $19^{\circ} 42'$ W.
and the Variation $21^{\circ} 32'$ E.

Reducing it 2' for diurnal change gives mean
declination $21^{\circ} 30'$ E.

Thence I run N. $87^{\circ} 30'$ W.

Var. $21^{\circ} 32'$ E.

59.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground
marked Y. I. R. on side facing the reserva-
tion from which bears

A pine 24 ins. diam. S. 85° E. 79 lks. dist.

Marked B. T.

A pine 18 ins. diam. N. 80° W. 51 lks. dist.

Marked B. T.

Thence I run N. $77\frac{3}{4}^{\circ}$ W.

Var. $21^{\circ} 32'$ E.

80.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the ground
for Seventy-second mile cor. marked 72 M.
on SE. face, Y. I. R. on side facing the
reservation and on the opposite side U. S.
P. L. 1890 from which bears

A pine 36 ins. diam. N. 34° E. 32 lks. dist.

Marked Y. I. R. 72 M. B. T.

A tamarack 20 ins. diam. S. 58° E. 93 lks. dist.

Marked 72 M. B. T. 1890.

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A pine 24 ins. diam. S. $3^{\circ} 45'$ W. 78 lks. dist.

Marked 72 M. 1890 B. T.

A pine 18 ins. diam. N. $60\frac{1}{2}^{\circ}$ W. 102 lks. dist.

Marked Y. I. R. 72 M. B. T.

Land rolling ridge; soil light sandy loam fair
and 2nd rate.

Good growth of pine and bunch grass; 1st

class yellow pine suitable for milling; scattering tamarack and fir.

Dry gulch about 12 chs. N. course NW.

.....
Thence I run S. 73° W. on Seventy-third mile.

Var. 20° E.

Change caused by local attraction.

4.00 Descend gradually.

30.00 Small trail bears N. and S. ascend.

40.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the ground
for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on NE. face
from which bears

A pine 28 ins. diam. N. 64° E. 12 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 18 ins. diam. S. $71\frac{1}{2}^{\circ}$ W. 100 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence S. $70\frac{1}{4}^{\circ}$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

Variation returning to mean declination.

55.67 Pine 30 ins. diam.

68.60 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground marked Y. I. R. on reservation
face, from which bears

A pine 20 ins. diam. N. 19° W. 8 lks. dist.

Marked Y. I. R. B. T.

A pine 24 ins. diam. S. $37\frac{1}{2}^{\circ}$ W. 26 lks. dist.

Marked B. T.

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This cor. is on top of high ridge small spur
bears S. 75° E.

Thence I run N. 57° $15'$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

Var. has returned to mean declination.

From this point a tree on top of a mountain bears S. $13^{\circ} 08'$ W. about 18 miles distant known as Grayback mountain. The main Klickitat flows S. along the west base of it which is claimed by the Indians to be the southwest corner of the reservation. The dense timber prevented me from taking another bearing; the intervening country drains into the Klickitat.

Ascend gradually.

80.00 Set post 10 ins. sq. $5\frac{1}{2}$ ft. long $2\frac{1}{2}$ ft. in the ground for Seventy-third mile cor. marked 73 M. on E. face, Y. I. R. on side facing the reservation and on the opposite side U. S. P. L. 1890 from which bears

A pine 28 ins. diam. N. $42\frac{1}{4}^{\circ}$ E. 92 lks. dist.
Marked Y. I. R. 73 M. B. T.

A pine 24 ins. diam. S. $43\frac{1}{4}^{\circ}$ E. 58 lks. dist.
Marked 73 M. 1890 B. T.

A pine 18 ins. diam. S. 50° W. 56 lks. dist.
Marked 73 M. 1890 B. T.

A pine 28 ins. diam. N. $31\frac{1}{2}^{\circ}$ W. 116 lks. dist.
Marked Y. I. R. 73 B. T.

Land rolling and hilly; last 40 chs. soil light sandy loam fair 2nd rate; good growth of pine and bunch grass; 1st class grazing land; 1st class yellow pine, scattering fir and tamarack.

Yakima Indian Reservation.

Oct. 16th.

.....
At 7 A. M. Oct. 17th by a back sight on line run yesterday I find the magnetic bearing to be S. $77^{\circ} 48'$ E. and the variation $20^{\circ} 33'$ E., being an increase of $3'$ by diurnal change.

Mean declination $20^{\circ} 30'$ E.

N. $57^{\circ} 15'$ W. on Seventy-fourth mile.

Var. $20^{\circ} 33'$ E.

Ascending gradually.

- 6.77 Set ironstone $18 \times 14 \times 12$ ins. 12 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A pine 12 ins. diam. East 8 lks. dist.

Marked Y. I. R. B. T.

A pine 15 ins. diam. N. $59\frac{1}{2}^{\circ}$ W. 14 lks. dist.

Marked B. T. Y. I. R.

Thence I run S. 68° W.

Var. $21^{\circ} 25'$ E.

Location attraction here.

Ascend gradually.

- 17.45 Top of high ridge. Set basalt stone $18 \times 12 \times 10$ ins. 12 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A pine 18 ins. diam. N. 63° E. 34 lks. dist.

Marked Y. I. R. B. T.

A pine 20 ins. diam. S. 44° W. 66 lks. dist.

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Marked B. T.

Thence I run S. $85\frac{3}{4}^{\circ}$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

Variation increased by local attraction.

- 40.00 Set ironstone $24 \times 15 \times 15$ ins. 18 ins. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on E. face and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears A pine 20 ins. diam. S. $43\frac{1}{2}^{\circ}$ E. 29 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 15 ins. diam. N. 9° E. 27 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run S. $80\frac{1}{2}^{\circ}$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

Along top of divide.

- 64.50 Set pine post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 24 ins. diam. N. $13\frac{1}{4}^{\circ}$ W. 90 lks. dist.

Marked Y. I. R. B. T.

A pine 28 ins. diam. S. $72\frac{3}{4}^{\circ}$ W. 28 lks. dist.

Marked B. T.

Thence I run S. $87\frac{1}{2}^{\circ}$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

- 80.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for Seventy-fourth mile cor. marked 74 M. on E. face, Y. I. R. on side facing the reservation and on the opposite side U. S. P. L. 1890 from which bears A fir 36 ins. diam. N. 18° E. 61 lks. dist.

Marked Y. I. R. 74 M. B. T.

A pine 24 ins. diam. S. 38° W. 103 lks. dist.

Marked 74 M. 1890 B. T.

A pine 28 ins. diam. N. $67\frac{3}{4}^{\circ}$ W. 82 lks. dist.

Marked Y. I. R. 74 M. B. T.

Yakima Indian Reservation.

No other trees within limits.

Land mountainous; soil sandy and stony, 3rd rate; bunch and pine grass 1st class grazing; good yellow pine and scattering fir and tamarack.

.....
Thence I run S. 85° W. on Seventy-fifty mile.

Var: $21\frac{1}{2}^{\circ}$ E.

Along on top of divide.

13.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 28 ins. diam. N. $61\frac{1}{2}^{\circ}$ E. 50 lks. dist.

Marked B. T.

A tamarack 20 ins. diam. N. $48^{\circ} 45'$ W. 48 lks. dist.

Marked Y. I. R. B. T.

Thence N. $85\frac{1}{4}^{\circ}$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

40.00 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile corner marked $\frac{1}{2}$ mile cor. from which bears

A pine 12 ins. diam. N. $58\frac{1}{2}^{\circ}$ E. 88 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 20 ins. diam. S. $103\frac{3}{4}^{\circ}$ W. 38 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run S. $79\frac{3}{4}^{\circ}$ W.

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Var. $21^{\circ} 34' E.$

Some local attraction here.

Along top of divide.

- 58.50 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base around post marked Y. I.

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R. on reservation side from which bears
A pine 24 ins. diam. N. $54^{\circ} 45' W.$ 7 lks. dist.

Marked Y. I. R. B. T.

A pine 15 ins. diam. S. $23^{\circ} W.$ 58 lks. dist.

Marked B. T.

Oct. 17th, 1890.

At 7 A. M. Oct. 18th, by a back sight on line run yesterday I find the magnetic bearing to be N. $58^{\circ} 10' E.$ and the variation $21^{\circ} 35' E.$ reducing it $3'$ for diurnal change; gives mean declination $21^{\circ} 32' E.$

Thence I run S. $76^{\circ} W.$

Var. $21^{\circ} 35' E.$

- 80.00 Set post 8 ins. sq. 5 ft. long 2 ft. in the ground for Seventy fifty mile cor. marked 75-M. on N. E. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised a mound of stone 2 ft. high $4\frac{1}{2}$ ft. base around post, from which bears

A pine 18 ins. diam. S. $61^{\circ} E.$ 182 lks. dist.

Marked 75 M. 1890 B. T.

A pine 24 ins. diam. S. $28\frac{3}{4}^{\circ} W.$ 202 lks. dist.

Marked 75 M. 1890 B. T.

A pine 30 ins. diam. N. $87\frac{1}{4}^{\circ} W.$ 202 lks. dist.

Marked Y. I. R. 75 M. B. T.

No other trees within limits.

Land mountainous; soil sandy and stony 3d rate.

Good growth of pine and bunch grass. Scattering pine, tam. and fir; good yellow pine on the sides of the mountain.

.....
Thence I run S. $81\frac{1}{2}^{\circ}$ W. on Seventy-sixth mile.

Var. $22^{\circ} 40'$ E.

Var. increased by local attraction.

Yakima Indian Reservation.

Along top of divide.

- 11.50 Set basalt stone 15x12x10 ins. 10 ins. in the ground marked Y. I. R. on side facing the reservation, raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A pine 24 ins. diam. N. 18° E. 90 lks. dist.

Marked Y. I. R. B. T.

A pine 20 ins. diam. S. 23° W. 61 lks. dist.

Marked B. T.

Thence I run N. $82\frac{1}{2}^{\circ}$ W.

Var. $22^{\circ} 40'$ E.

- 40.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked 2 M. on E. face from which bears

A pine 12 in. diam. N. 87° E. 21 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 15 ins. diam. S. $9\frac{1}{2}^{\circ}$ W. 29 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Descend mountain.

- 49.50 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 6 ins. diam. N. 37° E. 24 lks. dist.

Marked Y. I. R. B. T.

A pine 30 ins. diam. S. 78° W. 15 lks. dist.

Marked B. T.

Thence I run N. 40° W.

Var. $22\frac{1}{2}^{\circ}$ E.

Variation decreased $10'$ by local attraction.

- 64.20 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

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A pine 30 ins. diam. N. 30° E. 5 lks. dist.

Marked Y. I. R. B. T.

A pine 10 ins. diam. S. 10° W. 53 lks. dist.

Marked B. T.

Thence I run N. 67° W.

Var. $22\frac{1}{2}^{\circ}$ E.

- 73.00 Foot of mountain bears N. and S. and low gap Dry gulch course S. and one bears N. E.

- 80.00 Set post 6 ins. sq. $5\frac{1}{2}$ ft. long 2 ft. in the ground for Seventy-sixth mile cor. marked 76 M. on S. E. face; Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of stone $2\frac{1}{2}$ ft. high 5 ft. base around post, from which bears

A pine 30 ins. diam. N. $82\frac{1}{2}^{\circ}$ E. 65 lks. dist.

Marked Y. I. R. 76 M. B. T.

A pine 36 ins. diam. S. 19° E. 27 lks. dist.

Marked 76 M. B. T. 1890.

A pine 24 ins. diam. S. $86\frac{1}{4}^{\circ}$ W. 46 lks. dist.

Marked 76 M. 1890 B. T.

A pine 30 ins. diam. N. $21\frac{1}{2}^{\circ}$ W. 72 lks. dist.

Marked Y. I. R. 76 M. B. T.

Land mountainous; soil sandy and stony in places fair 2d rate.

Good yellow pine and scattering tamarack and fir and good growth of pine and bunch grass 1st class grazing

.....
Thence I run N. $18\frac{1}{2}^{\circ}$ W. on Seventy-seventh mile.

Var. 21° E.

Change caused by local attraction.

Yakima Indian Reservation.

Along top of divide.

15.40 Set post 6 ins. sq. $41\frac{1}{2}$ ft. long 2 ft. in the ground, marked Y. I. R. on side facing the reservation from which bears

A fir 16 ins. diam. N. 25° E. 45 lks. dist.

Marked Y. I. R. B. T.

A fir 20 ins. diam. S. $83\frac{1}{2}^{\circ}$ W. 73 lks. dist.

Marked B. T.

Thence I run N. $43\frac{1}{2}^{\circ}$ E.

Var. 21° E.

16.09 Intersect 2d Standard Parallel North 2 chains west of $\frac{1}{4}$ sec. cor. cor. on south side of sec. 33 T. 9 N. R. 14 E. which is a

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stake 2 ins. sq. $21\frac{1}{2}$ ft. long standing.

- 23.00 Set post 6 ins. sq. $41\frac{1}{2}$ ft. long in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 10 ins. diam. N. $74\frac{1}{2}^\circ$ E. 33 lks. dist.

Marked Y. I. R. B. T.

A tamarack 8 ins. diam. N. $64^\circ 30'$ W. 73 lks dist.

Marked B. T.

Thence I run N. $31\frac{1}{2}^\circ$ E.

Var. $221\frac{1}{4}^\circ$ E.

Change caused by local attraction.

- 40.00 Set post 6 ins. sq. $41\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{4}$ mile cor. marked $\frac{1}{2}$ M. on S. face, from which bears

A pine 30 ins. diam. N. $111\frac{1}{2}^\circ$ E. 17 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A fir 18 ins. diam. N. 66° W. 82 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. 53° W.

Var. $221\frac{1}{4}^\circ$ E.

- 55.00 Set post 6 ins. sq. 5 ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

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A pine 48 ins. diam. N. $401\frac{1}{2}^\circ$ W. 20 lks. dist.

Marked Y. I. R. B. T.

A pine 18 ins. diam. S. 27° E. 92 lks. dist.

Marked B. T.

Thence I run N. $631\frac{1}{2}^\circ$ W.

Var. $221\frac{1}{4}^\circ$ E.

Ascend gradually.

- 63.40 Set a post 6 ins. sq. $41\frac{1}{2}$ ft. long 2 ft. in the

ground marked Y. I. R. on side facing the reservation from which bears

A fir 30 ins. diam. N. 46° E. 80 lks. dist.

Marked Y. I. R. B. T.

A tamarack 26 ins. diam. S. 28° W. 33 lks. dist.

Marked B. T.

Thence I run N. $84\frac{1}{2}^{\circ}$ W.

Var. $22\frac{1}{4}^{\circ}$ E.

75.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 20 ins. diam. S. $74\frac{1}{2}^{\circ}$ E. 53 lks. dist.

Marked Y. I. R. B. T.

A pine 30 ins. diam. S. 68° W. 33 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 15° W.

Var. 22° $20'$ E.

Change caused by local attraction.

80.00 Set post 10 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for Seventy-seventh mile cor. marked 77 M. on SE. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, from which bears

A pine 20 ins. diam. N. $6\frac{1}{2}^{\circ}$ E. 82 lks. dist.

Marked Y. I. R. 77 M. B. T.

A pine 20 ins. diam. S. 74° E. 98 lks. dist.

Marked Y. I. R. 77 M. B. T.

Yakima Indian Reservation.

A pine 36 ins. diam. S. 69° W. 102 lks. dist.

Marked 77 M. 1890 B. T.

A pine 18 ins. diam. N. 30° W. 27 lks. dist.

Marked 77 M. 1890 B. T.

Land mountainous; soil sandy loam stony in places fair 2nd rate. Pine, tamarack and scattering fir. Pine is excellent for milling; bal. inferior good growth of pine grass; thick underbrush along sides of ridges on N. slope.

Oct. 20, 1890.

On the night of Oct. 20th, 1890, I take an observation on Polaris at 6h. 09m. local mean time in accordance with instructions contained in Manual. I find the magnetic course of the star to be N. $20^{\circ} 31'$ W. I then drove stake 2.50 chs. N. on line thus determined.

Local mean time of observation.. 6h. 09m.

Local mean time of U. C. Polaris

Oct. 15th.....11 40.7

Reduction for four days $3.93=15.7$ 15.7

Which taken from time of observa-

tion leave hour angle of Polaris. 5h. 21m.

Azimuth Lat. $46^{\circ} 14'$ N..... $1^{\circ} 49'$ E.

North end of needle..... $20^{\circ} 31'$ E.

The sum is the variation..... $22^{\circ} 20'$ E.

.....
At 6 A. M. Oct. 21st, I set my instrument on line established last night and find the magnetic bearing to be N. $20^{\circ} 32'$ W. and the variation $22^{\circ} 22'$ E. reducing it $2'$ for diurnal change, will give mean declination $22^{\circ} 20'$ E.

Thence I run N. 25° W. on Seventy-eighth mile.

Var. 22° 22' E.

Ascend gradually along top of divide.

Yakima Indian Reservation.

- 14.00 Set post 6 ins. sq. 4½ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A fir 10 ins. diam. S. 50° E. 34 lks. dist.

Marked Y. I. R. B. T.

A pine 20 ins. diam. N. 41° W. 65 lks. dist.

Marked B. T.

Thence I run N. 14 W.

Var. 22° 22' E.

- 30.10 Set sandstone 36x24x8 ins. 28 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2½ ft. high 5 ft. base alongside from which bears

A pine 18 ins. diam. N. 22¼° E. 28 lks. dist.

Marked Y. I. R. B. T.

A pine 18 ins. diam. S. 70° W. 15 lks. dist.

Marked B. T.

Thence I run N. 35¾° W.

Var. 22° 22' E.

- 40.00 Set post 6 ins. sq. 4½ ft. long 2 ft. in the ground for ½ mile cor. marked ½ M. on SE. face from which bears

A pine 18 ins. diam. N. 60½° E. 37 lks. dist.

Marked ½ M. B. T.

A pine 20 ins. diam. S. 59¼° W. 64 lks. dist.

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Marked $1\frac{1}{2}$ M. B. T.

Thence I run N. $45\frac{1}{2}^{\circ}$ W.

Var. $22^{\circ} 22'$ E.

49.00 Var. 24° E. local attraction here.

55.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 6 ins. diam. N. $101\frac{1}{2}^{\circ}$ E. 28 lks. dist.

Marked Y. I. R. B. T.

A pine 24 ins. diam. S. 82° W. 47 lks. dist.

Marked B. T.

Thence I run N. $63\frac{1}{4}^{\circ}$ W.

Yakima Indian Reservation.

Var. $22^{\circ} 20'$ E.

Variation has returned to true declination.

72.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 20 ins. diam. N. 62° W. 3 lks. dist.

Marked Y. I. R. B. T.

A pine 24 ins. diam. S. $35\frac{3}{4}^{\circ}$ E. 20 lks. dist.

Marked B. T.

Thence I run N. 89° W.

Var. $22^{\circ} 20'$ E.

80.00 Set post 7 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for Seventy-eighth mile cor. marked 78 M. on E. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, from which bears

A pine 8 ins. diam. N. $423\frac{1}{4}^{\circ}$ E. 22 lks. dist.

Marked Y. I. R. 78 M. B. T.

A pine 18 ins. diam. S. 40° E. 45 lks. dist.

Marked 78 M. 1890 B. T.

A pine 20 ins. diam. S. $21^{\circ} 45'$ W. 42 lks. dist.

Marked 78 M. 1890 B. T.

A pine 18 ins. diam. N. $33\frac{1}{2}^{\circ}$ W. 18 lks. dist.

Marked Y. I. R. 78 M. B. T.

Land mountainous; soil sandy loam fair 2d
rate; good growth of pine and bunch grass.
Timber pine tamarack and fir of inferior
quality.

.....
Thence I run N. $50\frac{1}{4}^{\circ}$ W. on Seventy-ninth
mile.

Var. $18\frac{1}{2}^{\circ}$ E.

Change caused by local attraction.

Yakima Indian Reservation.

Ascend gradually on top of divide between
Topinish or Piscoe and the waters flowing
into the Klickitat.

9.00 Intersect pine 10 ins. diam. which I marked
Y. I. R. on side facing the reservation for
angle cor. from which bears

A pine 8 ins. diam. S. $27\frac{1}{2}^{\circ}$ E. 19 lks. dist.

Marked B. T.

A pine 12 ins. diam. N. $7\frac{3}{4}^{\circ}$ W. 18 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $29\frac{1}{2}^{\circ}$ W.

Var. $22^{\circ} 20'$ E.

Variation has returned to mean declination.

18.90 Pine 24 ins. diam.

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25.80 Set post 7 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground from which bears

A balsam fir 20 ins. diam. N. $59\frac{1}{2}^{\circ}$ E. 45 lks. dist.

Marked Y. I. R. B. T.

A balsam fir 28 ins. diam. S. 30° W. 87 lks. dist.

Marked B. T.

Thence I run N. $38\frac{1}{4}^{\circ}$ W.

Var. $22^{\circ} 20'$ E.

Variation has returned to mean declination.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SE. face, from which bears

A pine 30 ins. diam. N. 84° E. 8 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 30 ins. diam. S. 25° W. 29 lks. dist.

Marked B. T.

48.88 A pine 30 ins. diam.

73.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 15 ins. diam N. 46° E. 42 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $67\frac{1}{2}^{\circ}$ W.

Var. $22^{\circ} 17'$ E.

Yakima Indian Reservation.

2 P. M. var. has decreased 3' by diurnal change.

80.00 Set post 8 ins. sq. $5\frac{1}{2}$ ft. long 2 ft. in the ground marked for Seventy-ninth mile cor. marked 79 M. on SE. face, Y. I. R. on side

facing the reservation and on opposite side
U. S. P. L. 1890; and raised mound of
stone 2 ft. high 5 ft. base around post from
which bears

A pine 20 ins. diam. N. 39° E. 34 lks. dist.

Marked Y. I. R. 79 M. B. T.

A pine 18 ins. diam. S. $48\frac{1}{2}^{\circ}$ E. 65 lks. dist.

Marked 79 M. 1890 B. T.

A tamarack 18 ins. diam. S. $58\frac{1}{4}^{\circ}$ W. 43 lks.
dist.

Marked 79 M. 1890 B. T.

No other trees within limits.

Land mountainous; Soil light sandy loam
fair 2d rate. Fir and tamarack of an
inferior quality; scattering yellow pine
suitable for mill; good bunch and pine
grass.

.....

Thence I run N. $61\frac{1}{4}^{\circ}$ W. on Eightieth mile.

Var. 22° 17' E.

Along top of divide ascending gradually.

23.64 Pine 36 ins. diam. which I marked Y. I. R. on
side facing the reservation for angle cor-
ner from which bears

A pine 12 ins. diam. N. 5° E. 39 lks. dist.

Marked Y. I. R. B. T.

A balsam fir 30 ins. diam. S. 81° W. 73 lks.
dist.

Marked B. T.

Thence I run West.

Var. 22° 17' E.

32.60 Set tamarack 7 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the

ground marked Y. I. R. on side facing the reservation from which bears

A tamarack 8 ins. diam. S. $52^{\circ} 45'$ E. 37 lks. dist.

Marked B. T.

Yakima Indian Reservation.

A pine 20 ins. diam. N. 12° W. 60 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 56° W.

Var. $22^{\circ} 19'$ E.

2' increase by diurnal change.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SE. face, from which bears

A pine 15 ins. diam. N. $28\frac{1}{2}^{\circ}$ E. 37 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A tamarack 18 ins. diam. S. $30\frac{1}{2}^{\circ}$ E. 31 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Oct. 21st, 1890.

At 7 A. M. Oct. 22d, by a back sight on line run yesterday I find the magnetic bearing to be S. $78^{\circ} 22'$ E. and the variation $22^{\circ} 22'$ E. mean declination $22^{\circ} 20'$ E.

Thence I run N. $61\frac{1}{4}^{\circ}$ W.

Var. $22^{\circ} 22'$ E.

54.60 Intersect pine 20 ins. diam. which I marked Y. I. R. on side facing the reservation for angle corner from which bears

A balsam 8 ins. diam. N. $76\frac{1}{2}^{\circ}$ E. 28 lks. dist.

Marked Y. I. R. B. T.

A balsam 12 ins. diam. S. $28\frac{1}{2}^{\circ}$ W. 39 lks. dist.

Marked B. T.

Thence I run N. $80\frac{3}{4}^{\circ}$ W.

Var. $22^{\circ} 25'$ E.

Increased by local attraction.

67.38 Balsam fir 15 ins. diam.

70.10 Set tamarack 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

Yakima Indian Reservation.

A pine 30 ins. diam. N. 88° E. 13 lks. dist.

Marked Y. I. R. B. T.

No other trees within limits.

Thence I run N. $84\frac{1}{4}^{\circ}$ W.

Var. $22^{\circ} 25'$ E.

75.00 Intersect line bet. secs. 19 and 24 Tp. 9 N. rgs. 13 and 14 E. W. M. 19.56 chs. N. of cor. of secs. 24, 25, 19 and 30 which is a fir tree 25 ins. diam. from which bears

A fir 28 ins. diam. N. 18° E. 36 lks. dist.

Marked T. 9 N. R. 14 E. S. 19 B. T.

A fir 6 ins. diam. S. 80° E. 34 lks. dist.

Marked T. 9 N. R. 14 E. S. 30 B. T.

A fir 20 ins. diam. S. 10° W. 28 lks. dist.

Marked T. 9 N. R. 13 E. S. 25 B. T.

A fir 24 ins. diam. N. 75° W. 55 lks. dist.

Marked T. 9 N. R. 13 E. S. 24 B. T.

80.00 Set tamarack post 10 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for Eightieth mile corner

marked 80 M. on E. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 from which bears A balsam fir 12 ins. diam. N. $82\frac{1}{2}^{\circ}$ E. 93 lks. dist.

Marked Y. I. R. 80 M. B. T.

A fir 15 ins. diam. S. $121\frac{1}{2}^{\circ}$ E. 59 lks. dist.

Marked 80 M. 1890 B. T.

A fir 28 ins. diam. N. 62° W. 73 lks. dist.

Marked 80 M. 1890 B. T.

No other trees within limits.

Land mountainous; soil sandy loam * 2d rate. Timber fir tamarack and balsam of inferior quality; scattering yellow pine

Yakima Indian Reservation.

suitable for milling; good pine and bunch grass; thick underbrush of small fir, tamarack, willow, maple and small pine.

.....
Thence I run N. 40° W. on Eighty-first mile cor.

Var. 22° E.

Decreased by local attraction.

Along top of divide, ascending gradually.

31.60 Set tamarack post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A fir 18 ins. diam. N. $241\frac{1}{2}^{\circ}$ E. 33 lks. dist.

Marked Y. I. R. B. T.

A fir 20 ins. diam. N. $281\frac{1}{4}^{\circ}$ W. 34 lks. dist.

Marked B. T.

Thence I run N. 4° W.

Var. 22° E.

- 40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile corner marked $\frac{1}{2}$ M. on S. face from which bears

A fir 8 ins. diam. N. 40° E. 31 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A fir 20 ins. diam. N. 30° W. 55 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. $43\frac{1}{4}$ ° W.

Var. 22° 20' E.

Increased to mean declination.

- 48.60 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A pine 30 ins. diam. N. 60° E. 43 lks. dist.

Marked Y. I. R. B. T.

A pine 18 ins. diam. S. 27° W. 45 lks. dist.

Marked B. T.

Thence I run N. 74° W.

Yakima Indian Reservation.

Var. 22° 20' E.

- 71.40 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A fir 6 ins. diam. S. $34\frac{1}{2}$ ° E. 29 lks. dist.

Marked Y. I. R. B. T.

A fir 20 ins. diam. N. $22\frac{1}{2}$ ° W. 27 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 38° 45' W.

Var. 22° 30' E.

Increased by local attraction.

- 80.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the

ground for Eighty-first mile corner marked
81 M. on S. E. face, Y. I. R. on side facing
the reservation and on opposite side U. S.
P. L. 1890, from which bears

A fir 6 ins. diam. N. $57\frac{1}{2}^{\circ}$ E. 23 lks. dist.

Marked Y. I. R. 81 M. B. T.

A fir 18 ins. diam. S. $53\frac{1}{2}^{\circ}$ E. 41 lks. dist.

Marked Y. I. R. 81 M. B. T.

A fir 15 ins. diam. S. 68° W. 39 lks. dist.

Marked 81 M. 1890 B. T.

A fir 20 ins. diam. N. $39\frac{1}{2}^{\circ}$ W. 41 lks. dist.

Marked 81 M. 1890 B. T.

Land mountainous; soil light sandy loam
2d rate. Fir tamarack pine hemlock and
some scattering white pine all of an infer-
ior quality except some scattering yellow
pine and fir that is suitable for milling;
thick underbrush of small pine, tamarack
and willow 40 chs.; bal. open timber; good
growth of pine and bunch grass first 40
chs.; bal. no grass.

Oct. 22, 1890.

.....
Yakima Indian Reservation.

At 7 A. M. October 23d by a back sight on
line run yesterday I find the magnetic
bearing to be S. $61^{\circ} 20'$ E.

Var. $22^{\circ} 35'$ E.

Change caused by local attraction. Mean
declination $22^{\circ} 32'$ E.

Thence I run N. 34° W. on Eighty-second
mile.

Var. 22° 35' E.

Ascend gradually along top of divide.

- 4.90 Set post 6 ins. sq. 4½ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A spruce 24 ins. diam. N. 58½° E. 39 lks. dist.

Marked Y. I. R. B. T.

A fir 12 ins. diam. S. 19½° W. 11 lks. dist.

Marked B. T.

Thence I run N. 31½° W.

Var. 22° 35' E.

- 7.46 Intersect line bet. secs. 13 and 24, 17.12 chs. east of cor. to secs. 13, 14, 23 and 24, which is a post 4 ins. sq. 4 ft. long from which bears

A fir 28 ins. diam. N. 10° E. 24 lks. dist.

Marked T. 9 N. R. 13 E. S. 13 B. T.

A fir 30 ins. diam. S. 70° E. 96 lks. dist.

Marked T. 9 N. R. 13 E. S. 24 B. T.

A tamarack 26 ins. diam. S. 8° W. 23 lks. dist.

Marked T. 9 N. R. 13 E. S. 23 B. T.

A fir 8 ins. diam. N. 25° W. 53 lks. dist.

Marked T. 9 N. R. 13 E. S. 14 B. T.

- 8.00 Enter small prairie with scattering trees bears NE. and SW.

- 14.80 Set post 8 ins. sq. 4½ ft. long 2 ft. in the ground marked

Yakima Indian Reservation.

Y. I. R. on side facing the reservation from which bears

A tamarack 8 ins. diam. S. 49½° E. 106 lks. dist.

Marked Y. I. R. B. T.

A pine 6 ins. diam. S. $29\frac{1}{2}^{\circ}$ W. 31 lks. dist.
marked B. T.

From this point a spur bears S. 35° W.

Thence I run N. 37° E.

Var. $22^{\circ} 07'$ E.

Change caused by local attraction.

Ascending gradually.

36.87 Fir 30' ins. diam. and enter dense timber
bears SW. and E.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on
SW. face from which bears

A fir 28 ins. diam. S. 6° E. 55 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A fir 18 ins. diam. N. $2\frac{1}{2}^{\circ}$ W. 49 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. $12\frac{3}{4}^{\circ}$ E.

Var. $22^{\circ} 32'$ E.

At 10 A. M. var. has increased by 25' the
change caused by local attraction.

45.40 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground marked Y. I. R. on side facing the
reservation from which bears

A fir 20 ins. diam. S. 30° E. 28 lks. dist.

Marked Y. I. R. B. T.

A tamarack 18 ins. diam. N. 56° W. 55 lks.
dist.

Marked B. T.

Top of ascent on high mountain.

Thence I run N. $41\frac{3}{4}^{\circ}$ E.

Var. $22^{\circ} 32' E$.

Through dense timber.

Yakima Indian Reservation.

- 52.10 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A fir 24 ins. diam. S. $14^{\circ} E$. 8 lks. dist.

Marked B. T.

A tamarack 30 ins. diam. N. $91\frac{1}{2}^{\circ} W$. 33 lks. dist.

Marked B. T.

Thence I run N. $78\frac{1}{4}^{\circ} E$.

Var. $22^{\circ} 23' E$.

Change caused by local attraction.

- 62.80 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation, from which bears

A fir 24 ins. diam. S. $71\frac{1}{2}^{\circ} E$. 26 lks. dist.

Marked Y. I. R. B. T.

A fir 24 ins. diam. N. $49^{\circ} W$. 32 lks. dist.

Marked B. T.

Thence I run N. $43\frac{1}{4}^{\circ} W$.

Var. $22^{\circ} 23' E$.

- 80.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for Eighty-second mile corner marked 82 M. on SE. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, from which bears

A fir 20 ins. diam. S. $68\frac{1}{2}^{\circ} E$. 33 lks. dist.

Marked Y. I. R. 82 M. B. T.

A fir 16 ins. diam. S. $72^{\circ} W$. 53 lks. dist.

Marked 82 M. 1890 B. T.

A fir 18 ins. diam. N. 37° W. 41 lks. dist.

Marked 82 M. 1890 B. T.

No other trees within limits.

Land mountainous; soil loam 2nd rate; dense timber, fir, tamarack, spruce and hemlock and scattering white pine all inferior except some scattering fir which is suitable for milling; thick underbrush of small fir, tamarack, balsam and wild currant bushes and fallen timber 70 chs.—val. open prairie with good pine and bunch grass; no grass in timber.

Oct. 23rd.

.....
At 7 A. M. Oct. 24th, by a back sight on line run yesterday I find the magnetic bearing to be S. 65° 41' E. and the variation 22° 26' E. being an increase of 3' by diurnal change

Thence I run N. 50° E. on Eighty-third mile.

Var. 22° 26' E.

Along top of divide on high mountain known as Simcoe Mt.

9.22 Intersect fir 28 ins. diam.

12.66 Intersect fir 20 ins. diam.

19.00 Set post 7 ins. sq. 4½ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A fir 20 ins. diam. N. 12½° E. 39 lks. dist.

Marked Y. I. R. B. T.

A fir 28 ins. diam. S. 68¼° W. 22 lks. dist.

Marked B. T.

Thence N. $26\frac{1}{4}^{\circ}$ W.

Var. 22° $26'$ E.

28.70 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A fir 15 ins. diam. N. $81\frac{1}{2}^{\circ}$ E. 24 lks. dist.

Marked Y. I. R. B. T.

A fir 5 ins. diam. S. 35° $45'$ W. 27 lks. dist.

Marked B. T.

Thence I run S. $59\frac{3}{4}^{\circ}$ W.

Yakima Indian Reservation.

Var. 22° $26'$ E.

35.60 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears

A fir 15 ins. diam. N. 39° E. 19 lks. dist.

Marked Y. I. R. B. T.

A black pine 6 ins. diam. S. $33\frac{1}{4}^{\circ}$ W. 27 lks. dist.

Marked B. T.

Thence I run N. 20° W.

Var. 22° $26'$ E.

36.58 Intersect line bet. secs. 12 and 13, 2° 51 chs. east of $\frac{1}{4}$ sec. cor. from which bears

A black pine 10 ins. diam. N. 40° E. 57 lks. dist.

Marked $\frac{1}{4}$ S. B. T.

A black pine 10 ins. diam. S. 65° W. 59 lks. dist.

Marked $\frac{1}{4}$ S. B. T.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the

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ground for $\frac{1}{2}$ mile corner marked $\frac{1}{2}$ M. on SE. face, from which bears

A black pine 8 ins. diam. N. $7\frac{1}{4}^{\circ}$ E. 23 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A fir 15 ins. diam. S. 54° W. 5 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

59.03 Intersect fir 28 ins. diam.

68.45 Intersect fir 24 ins. diam.

72.23 Intersect spruce 24 ins. diam.

73.40 Intersect fir 20 ins. diam.

80.00 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for eighty-third mile corner marked 83 M. on SE. face Y. I. R. on side facing the reservation and on the opposite

Yakima Indian Reservation.

side U. S. P. L. 1890 from which bears

A tamarack 15 ins. diam. N. $28\frac{1}{4}^{\circ}$ E. 16 lks. dist.

Marked Y. I. R. 83 M. B. T.

A spruce 12 ins. diam. S. 35° E. 67 lks. dist.

Marked Y. I. R. 83 M. B. T.

A fir 18 ins. diam. S. 12° W. 77 lks. dist.

Marked 83 M. 1890 B. T.

A tamarack 18 ins. diam. N. 78° W. 13 lks. dist.

Marked 83 M. 1890 B. T.

Land mountainous; soil light loam 2nd rate.

Dense forest of fir tamarack black pine spruce, hemlock and scattering white pine all of inferior quality except a few scatter-

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ing red fir suitable for milling; fallen timber and thick underbrush of small fir, tamarack, spruce and wild currant bushes. Thence I run N. $62\frac{1}{4}^{\circ}$ W. on eighty-fourth mile.

Var. $21\frac{1}{2}^{\circ}$ E.

Change caused by local attraction.

Along top of divide and high mountains through dense timber and thick underbrush.

16.40 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground marked Y. I. R. on side facing the reservation from which bears.

A fir 24 ins. diam. N. 34° E. 53 lks. dist.

Marked Y. I. R. B. T.

A fir 20 ins. diam. S. 22° W. 25 lks. dist.

Marked B. T.

Oct. 24, 1890.

Yakima Indian Reservation.

On the night of Oct. 24, 1890, I take an observation on Polaris at 6h. 02m. local mean time and find the magnetic bearing of the star to be N. $19^{\circ} 30'$ West.

I then set a stake 3 chs. N. of my line thus determined:

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Local mean time of observation.. 6h. 02m.

Local mean time U. S. Polaris

Oct. 15th.....11h. 40.7m.

Reduction for 8 days (as per table

1 part 11) 3.93m=31.4m..... 31.4m.

Local mean time U. C. Polaris

Oct. 23rd.....11h. 09.3m.

Which taken from time of obser-
vation

Leaves hour angle of Polaris..... 5h. 03m.

Azimuth of Polaris for Lat. 46°

17' N..... 1° 49' E.

North end of needle.....19° 30' E.

The sum is the variation 21° 19' E.

At 6 A. M. Oct. 25th, I set my instrument on
line established on the night of the 24th
inst. and find its magnetic bearing to be
N. 19° 32' W. and the variation 21° 21' E.
reducing it 2' for diurnal change gives
mean declination 21° 19' E.

Thence I run West.

Var. 21° 21' E.

Through dense black pine timber.

Yakima Indian Reservation.

32.70 Intersect fir 20 ins. diam. and leave dense
timber. Enter open black pine timber
bears N. and S.

40.00 Set post 6 ins. sq. 4½ ft. long 2 ft. in the
ground for ½ mile cor. marked ½ M. on
E. face, from which bears

A black pine 10 ins. diam. N. 54° E. 16 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

A black pine 10 ins. diam. S. $49\frac{1}{2}^{\circ}$ E. 31 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. 50° W.

Var. $21^{\circ} 21'$ E.

48.85 Intersect line bet. secs. 11 and 12, 13.87 chs.

N. of $\frac{1}{4}$ cor. from which bears

A black pine 15 ins. diam. S. $73\frac{1}{2}^{\circ}$ E. 44 lks.
dist.

Mkd. $\frac{1}{4}$ S. B. T.

A tamarack 20 ins. diam. N. $40^{\circ} 30'$ W. 47
lks. dist.

Marked $\frac{1}{4}$ S. B. T.

55.28 Black pine 12 ins. diam.

80.00 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground for Eighty-fourth mile corner
marked 84M. on SE. face, Y. I. R. on side
facing the reservation and on opposite side
U. S. P. L. 1890, from which bears
A tamarack 15 ins. diam. N. $78\frac{1}{2}^{\circ}$ E. 43 lks.
dist.

Marked Y. I. R. 84 M. B. T.

A tamarack 18 ins. diam. S. 77° E. 83 lks.
dist.

Marked Y. I. R. 84 M. B. T.

A black pine 12 ins. diam. S. 60° W. 47 lks.
dist.

Marked 84 M. 1890 B. T.

A black pine 5 ins. diam. N. $14\frac{1}{2}^{\circ}$ W. 67 lks.
dist.

Marked Y. I. R. 84 M. B. T.

Land gently rolling mountain top; soil loam
good 2nd rate; 32 chs. dense forest of fir
tamarack black pine, spruce, hemlock,

Yakima Indian Reservation.

some scattering fir suitable for milling;
thick underbrush of small fir, tamarack
small pine with fallen timber bal. open
black pine timber with scattering tamarack
and fir all inferior; good growth of
bunch and pine grass 47 chs.; bal. no grass.
Thence I run N. 22° W. on Eighty-fifty mile.

Var. 21° 21' E.

Along top of divide through open black timber land gently rolling.

- 5.16 Intersect line bet. secs. 2 and 11 27.87 chs.
west of cor. of secs. 1, 2, 11 and 12 which
is a post marked from which bears
A pine 5 ins. diam. N. 89° E. 24 lks. dist.
Marked T. 9 N. R. 13 E. S. 1 B. T.
A pine 3 ins. diam. S. 35° E. 37 lks. dist.
Marked T. 9 N. R. 13 E. S. 12 B. T.
A pine 3 ins. diam. S. 28½° W. 56 lks dist.
Marked T. 9 N. R. 13 E. S. 11 B. T.
A tamarack 18 ins. diam. M. 71½° W. 24 lks.
dist.

Marked T. 9 N. R. 13 E. S. 2 B. T.

- 11.81 A fir 24 ins. diam.

- 16.00 Set post 7 ins. sq. 4½ ft. long 24 ins. in the
ground marked Y. I. R. on side facing the
reservation, from which bears.

A pine 18 ins. diam. S. 78° E. 9 lks. dist.

Marked Y. I. R. B. T.

A pine 10 ins. diam. S. 75° W. 91 lks. dist.

Marked B. T.

Thence I run N. 37¼° W.

Var. 21° 21' E.

- 40.00 Set post 6 ins. sq. 4½ ft. long 24 ins. in the

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ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on
SE. face, from which bears

Yakima Indian Reservation.

A black pine 12 ins. diam. N. $37\frac{1}{4}^{\circ}$ E. 41 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

A black pine 10 ins. diam. S. 52° W. 18 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

46.66 Pine 24 ins. diam.

52.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the
ground marked Y. I. R. on side facing the
reservation from which brs.

A black pine 20 ins. diam. N. 30° E. 36 lks.
dist.

Marked Y. I. R. B. T.

A black pine 12 ins. diam. S. $27^{\circ} 45'$ E. 50 lks.
dist.

Marked Y. I. R. B. T.

Thence I run N. $81\frac{1}{4}^{\circ}$ W.

Var. $21^{\circ} 21'$ E.

75.13 Tamarack 28 ins. diam.

80.00 Set post 7 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the
ground for Eighty-fifth mile cor. marked
85 M. on E. face. Y. I. R. on side facing
the reservation and on opposite side U. S.
P. L. 1890 from which brs.

A black pine 12 ins. diam. N. 56° E. 73 lks.
dist.

Marked Y. I. R. 85 M. B. T.

A black pine 8 ins. diam. S. 13° E. 16 lks.
dist.

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Marked 85 M. 1890 B. T.

A black pine 5 ins. diam. S. $41^{\circ} 45'$ W. 94 lks. dist.

Marked 85 M. 1890 B. T.

A tamarack 15 ins. diam. N. $41\frac{3}{4}^{\circ}$ W. 117 lks. dist.

Marked 85 M. 1890 B. T.

Land rolling on top of broad mountain.

Soil sandy loam good 2nd rate. Timber black pine, tamarack and fir inferior with patches of thick underbrush of small pine, fir and tamarack.

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From this cor. the $\frac{1}{4}$ sec. cor. between secs. 2 and 3 bears S. $22^{\circ} 39'$ W. 2.02 chs. dist. which is a granite 6 ins. above ground and 10x6 ins. marked $\frac{1}{4}$ S. from which bears A pine 30 ins. diam. N. 21° E. 34 lks. dist. A pine 18 ins. diam. S. $20^{\circ} 30'$ W. 54 lks. dist.

.....
Thence I run N. $2^{\circ} 45'$ W. on Eighty-sixth mile.

Var. $21^{\circ} 21'$ E.

Along top of divide over rolling land through open timber.

38.22 Intersect Tp. line bet. secs. 3 and 34 92 lks. west of cor. of secs. 2, 3, 34 and 35 Tps. 9 and 10 N. rg. 13 E. from which bears A fir 72 ins. diam. N. 28° E. 41 lks. dist.

Marked T. 10 N. R. 13 E. S. 35 B. T.

A black pine 15 ins. diam. S. 5° W. 15 lks. dist.

Marked T. 9 N. R. 13 E. S. 3 B. T.

A fir 36 ins. diam. N. 60° W. 114 lks. dist.

Marked T. 10 N. R. 13 E. S. 34 B. T.

- 40.00 Set post 8 ins. sq. 5½ ft. long 24 ins. in the ground for ½ mile cor. marked ½ M. on S. face and raised mound of stone and earth 2 ft. high 4½ ft. base around post from which brs.

A pine 50 ins. diam. N. 29° E. 49 lks. dist.

Marked ½ M. B. T.

A pine 36 ins. diam. S. 85½° W. 33 lks dist.

Marked ½ M. B. T.

Oct. 25, 1890.

At 7 A. M. Oct. 27th, 1890, I find the magnetic bearing of the last line run to be S. 23° 45' E. and the Var. 21° E. Change caused by local attraction.

Ascending gradually on same course.

- 43.00 Leave open and enter dense forest of pine fir tamarack and balsam with thick under-

Yakima Indian Reservation.

brush of small fir, tamarack, wild currant and fallen timber.

- 48.52 Fir 28 ins. diam.

- 80.00 Top of high ridge basalt stone 24x24x8 ins. 18 ins. in the ground for eighty-sixth mile corner marked 86 M. on S. face Yir on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of

stone $2\frac{1}{2}$ ft. high 5 ft. base alongside, from which bears

A fir 24 ins. diam. N. $72\frac{1}{4}^{\circ}$ E. 166 lks. dist.

Marked Y. I. R. 86 M. B. T.

A black pine 12 ins. diam. S. 3° E. 26 lks. dist.

Marked Y. I. R. 86 M. B. T.

A fir 6 ins. diam. S. 14° W. 19 lks. dist.

Marked 86 M. 1890 B. T.

A fir 20 ins. diam. N. 81° W. 67 lks. dist.

Marked 86 M. 1890 B. T.

Land mountainous; soil sandy loam good 2nd rate. Dense forest of fir tamarack and balsam with thick underbrush of same and fallen timber 37 chs.; balance open black pine timber all inferior; good bunch and pine grass 43 chs.; bal. no grass.

.....
Thence I run N. 47° W. on eighty-seventh mile.

Var. 21° E.

Along top of divide through dense forest.

- 5.91 Trail chopped out for wagon road and well blazed brs. N. and S.
- 10.82 Fir 24 ins. diam.
- 16.13 Fir 20 ins. diam.
- 26.37 Fir 28 ins. diam.
- 39.50 Enter opening bears NE. and SW.

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- 40.00 Set basalt stone 18x15x10 ins. 12 ins. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on

SE. face and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A fir 18 ins. diam. S. 74° E. 67 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A tamarack 20 ins. diam. S. $87\frac{1}{4}^{\circ}$ W. 43 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. $11\frac{1}{2}^{\circ}$ E.

Var. 21° E.

Ascend

50.00 Top of ridge and descend.

56.30 Intersect fir 24 ins. diam. Which I marked Y. I. R. on side facing the reservation.

Thence I run N. 36° W.

Var. 21° E.

Descend gradually.

67.40 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground marked Y. I. R. on side facing the reservation from which bears

A tamarack 6 ins. diam. N. 56° E. 27 lks. dist.

Marked Y. I. R. B. T.

Fir 6 ins. diam. N. $72\frac{1}{2}^{\circ}$ W. 29 lks. dist.

Marked B. T.

Oct. 27th.

At 7 A. M. Oct. 28th, by a back sight on line run yesterday I find the magnetic bearing to be S. $57^{\circ} 10'$ E. and the variation $21^{\circ} 10'$ E. Change caused by local attraction.

Thence I run N. 64° W.

Var. $21^{\circ} 10' E.$

80.00 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground for Eighty-seventh mile corner

Yakima Indian Reservation.

marked 87 M. on SE. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L., 1890, from which bears A fir 12 ins. diam. N. $34\frac{3}{4}^{\circ} E.$ 126 lks. dist.

Marked Y. I. R. 87 M. B. T.

A pine 6 ins. diam. S. $73^{\circ} E.$ 126 lks. dist.

Marked Y. I. R. 87 M. B. T.

A fir 30 ins. diam. S. $89^{\circ} W.$ 127 lks. dist.

Marked 87 M. 1890 B. T.

A fir 24 ins. diam. N. $40\frac{1}{4}^{\circ} W.$ 26 lks. dist.

Marked 87 M. Y. I. R. B. T.

Land mountainous; soil sandy loam good 2d rate.

Timber black pine tamarack fir hemlock and scattering white pine all inferior; thick underbrush and fallen timber same as above and scattering patches of bunch and pine grass.

.....
Thence I run N. $64^{\circ} W.$ on eighty-eighth mile.

Var. $21^{\circ} 10' E.$

Along top of divide through dense timber and underbrush.

.53 Fir 20 ins. diam.

2.90 Set basalt stone 28x18x15 ins. 20 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft.

high $4\frac{1}{2}$ ft. base alongside from which bears

A tamarack 12 ins. diam. S. $39\frac{1}{2}^{\circ}$ E. 11 lks. dist.

Marked B. T.

Thence I run N. $22\frac{1}{4}^{\circ}$ E.

Var. $21^{\circ} 10'$ E.

9.65 Edge of basalt bluff 30 ft. high brs. E. and W. Descend.

14.20 Intersect a fir 30 ins. diam. which I marked Y. I. R. on side facing the reservation for Yakima Indian Reservation.

angle corner, from which bears

A tamarack 20 ins. diam. S. 35° E. 5 lks. dist.

Marked Y. I. R. B. T.

A tamarack 6 ins. diam. S. 80° W. 16 lks. dist.

Marked B. T.

Thence I run N. 33° W.

Var. $21^{\circ} 04'$ E.

Decrease caused by local attraction.

18.40 Intersect tamarack 20 ins. diam. which I marked Y. I. R. on side facing the reservation for angle corner from which bears

A balsam 8 ins. diam. N. 80° E. 44 lks. dist.

Marked Y. I. R. B. T.

A tamarack 10 ins. diam. West 27 lks. dist.

Marked B. T.

Thence I run N. $5\frac{1}{2}^{\circ}$ E.

Var. $21^{\circ} 04'$ E.

Descend along top of narrow strip.

31.06 Fir 20 ins. diam.

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40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on S. face, from which bears

A white pine 15 ins. diam. S. 63° E. 17 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A tamarack 10 ins. diam. N. $44\frac{1}{2}^{\circ}$ W. 18 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run north.

Var. 21° E.

Change caused by local attraction.

44.20 Set basalt stone $20 \times 10 \times 10$ ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation from which bears

Yakima Indian Reservation.

A fir 5 ins. diam. S. $80\frac{1}{2}^{\circ}$ E. 6 lks. dist.

Marked Y. I. R. B. T.

A fir 5 ins. diam. S. 13° W. 11 lks. dist.

Marked B. T.

Thence I run N. $27\frac{1}{2}^{\circ}$ W.

Var. 21° E.

Along very narrow ridge rocky; through dense timber.

47.30 Set basalt stone $30 \times 30 \times 20$ ins. and built mound of stone 24 ins. high $4\frac{1}{2}$ ft. base around it marked Y. I. R. on side facing the reservation from which bears

A tamarack 8 ins. diam. N. $67\frac{1}{2}^{\circ}$ E. 12 lks. dist.

Marked Y. I. R. B. T.

A basalt rock 9 ft. high and 10×10 ft. marked

with a cross (x) which bears S. 55° W. 8
lks. dist.

Marked B. O.

Thence I run N. 66½° E.

Var. 21° 12' E.

Change caused by local attraction.

48.00 Descend abruptly.

51.50 Spruce 20 ins. diam. which I marked Y. I. R.
on side facing the reservation from which
bears

A spruce 8 ins. diam. S. 80° East 11 lks. dist.

Marked Y. I. R. B. T.

A balsam 5 ins. diam. N. 89° W. 22 lks. dist.

Marked B. T.

Thence I run N. 46½° E.

Var. 21° 12' E.

Descend gradually.

60.76 Intersect fir 28 ins. diam. which I marked
Y. I. R. on side facing the reservation from
which bears

A spruce 18 ins. diam. North 14 lks. dist.

Marked B. T.

A fir 18 ins. diam. N. 65° E. 33 lks. dist.

Marked Y. I. R. B. T.

Yakima Indian Reservation.

Thence I run N. 10° 45' E.

Var. 20° 46' E.

Change caused by local attraction.

65.00 Low gap and head of small creek course east
empties into the Topinish and gulch course
NW. empties into the Klickitat.

Ascend gradually.

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73.60 Trail bears NW. and SE. well blazed and enter open timber brs. NE. and W.

Ascend.

80.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground for Eighty-eighth mile corner marked 88 M. on S. face Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 from which brs.

A red fir 50 ins. diam. N. 17° E. 30 lks. dist.

Marked 88 M. 1890 B. T.

A red fir 50 ins. diam. S. $62\frac{1}{2}^{\circ}$ E. 25 lks. dist.

Marked Y. I. R. 88 M. B. T.

A white fir 18 ins. diam. S. 30° W. 56 lks. dist.

Marked 88 M. 1890 B. T.

A tamarack 24 ins. diam. N. $38\frac{1}{2}^{\circ}$ W. 56 lks. dist.

Marked 88 M. 1890 B. T.

Land mountainous; soil sandy loam 2d rate; 73 chs. of dense pine tamarack fir spruce and hemlock all inferior except scattering red fir suitable for milling; thick underbrush of small pine, fir, tam, and spruce salal and wild currant with fallen timber; good bunch grass in open timber 7 chs. bal. no grass.

Oct. 28th 1890.

.....
Yakima Indian Reservation.

On the night of Oct. 28, 1890, I take an observation on Polaris at 6h. 09m. local mean time in accordance with instructions

contained in Manual and find the magnetic bearing of the star to be North 19° West.

I then drove stake 2.50 chs. north on line thus determined.

Local mean time of observation... 6h. 09m.

Local mean time of U. C. Polaris

Nov. 1st.....10h. 33.9m.

Add 3.93 for 5 days = 19.6m.... 19.6m.

Local mean time of U. C. Polaris

Oct. 28th.....10h. 53.5m.

Which taken from time of obser-

vation leaves hour angle..... 4h. 40.6m.

Azimuth for Lat. $46^{\circ} 30'$ N..... $1^{\circ} 45'$ E.

North end of needle..... $19^{\circ} 00'$ E.

The sum is the variation..... $20^{\circ} 46'$ E.

.....

At 7 A. M. Oct. 29th, I set my instrument on line established last night and find the magnetic bearing to be N. $19^{\circ} 02'$ W. and variation $20^{\circ} 48'$ E.; a reduction of $2'$ for diurnal change (Table page 55) gives mean declination $20^{\circ} 46'$ E.

Change caused by local attraction.

Thence I run N. $24^{\circ} 45'$ E. on eighty-ninth mile.

Var. $20^{\circ} 48'$ E.

Along top of divide through open black pine timber.

Ascend gradually.

12.10 Top of flat ridge and tableland.

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Set basalt stone 24x20x15 ins. 18 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A black pine 12 ins. diam. N. $68\frac{1}{4}^{\circ}$ E. 60 lks. dist.

Marked Y. I. R. B. T.

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A black pine 10 ins. diam. N. $85\frac{1}{2}^{\circ}$ W. 32 lks. dist.

Marked B. T.

Thence I run N. 51° E.

Var. $20^{\circ} 48'$ E.

Over tableland through open black timber with scattering yellow pine and red fir.

28.84 Black pine 12 ins. diam.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW. face from which bears.

A black pine 10 ins. diam. S. 70° E. 12 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A tamarack 24 ins. diam. N. 6° W. 46 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

51.20 Set slate stone 36x18x4 ins. 28 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

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A black pine 8 ins. diam. N. 15° E. 26 lks.
dist.

Marked Y. I. R. B. T.

A black pine 15 ins. diam. N. $61\frac{3}{4}^{\circ}$ W. 48 lks.
dist.

Marked B. T.

Thence I run N. $7\frac{1}{4}^{\circ}$ E.

Var. $21\frac{1}{2}^{\circ}$ E.

At 10 A. M. var. has increased by 41' the
change caused by local attraction.

67.20 Set slate stone $40 \times 28 \times 4$ ins. 28 ins. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of stone 2 ft.
high $4\frac{1}{2}$ ft. base alongside, from which
Yakima Indian Reservation.

bears

A fir 20 ins. diam. N. 80° E. 58 lks. dist.

Marked Y. I. R. B. T.

A black pine 6 ins. diam. S. 32° W. 5 lks. dist.

Marked B. T.

Thence I run N. $63\frac{1}{2}^{\circ}$ E.

Var. $21\frac{1}{2}^{\circ}$ E.

Descend gradually through open timber.

80.00 Set charred post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft.
in the ground for Eighty-ninth mile cor.
marked 89 M. on S. W. face, Y. I. R. on
side facing the reservation and on opposite
side U. S. P. L. 1890 from which bears
A black pine 10 ins. diam. N. 61° E. 180 lks.
dist.

Marked Y. I. R. 89 M. B. T.

A black pine 10 ins. diam. S. $18\frac{1}{4}^{\circ}$ W. 130
lks. dist.

Marked Y. I. R. 89 M. B. T.

A black pine 20 ins. diam. N. 72° W. 238 lks. dist.

Marked 89 M. 1890 B. T.

The other trees dead in small burn.

Land gently rolling tableland; soil sandy loam good 2nd rate. Open black pine timber of a short stunted variety with wide-spreading branches inferior scattering yellow pine and red fir suitable for milling; no underbrush; good growth of pine and bunch grass.

.....
Thence I run N. 51½° E. on ninetieth mile.

Var. 21½° E.

Along top of divide.

- 1.38 Trail well blazed bears NW. and SE.
- 2.40 Descend abruptly.
- 3.00 Foot of bluff about 40 ft. high and descend gradually and enter dense timber and underbrush.

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- 6.00 Intersect fir 8 ins. diam. which I marked Y. I. R. on side facing the reservation from which bears

A fir 18 ins. diam. N. 65¾° W. 18 lks. dist.

Marked B. T.

Thence I run N. 49° E.

Var. 21° 28' E.

Variation decreased by diurnal change 2'.

Descend into gap head of small stream flows S. into the Topinish.

- 17.00 Ascend and leave underbrush.
20.00 Enter small opening bears NW. and S.
21.10 Set post 6 ins. sq. $5\frac{1}{2}$ ft. long 24 ins. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of stone 2 ft.
high $4\frac{1}{2}$ ft. base around post from which
bears

A tamarack 20 ins. diam. S. 54° E. 20 lks.
dist.

Marked Y. I. R. B. T.

A pine 28 ins. diam. N. 57° W. 36 lks. dist.

Marked B. T.

Thence I run N. 71° E.

Var. 21° $28'$ E.

Ascend.

- 29.87 Intersect tamarack 20 ins. diam.
40.00 Set sandstone $18 \times 12 \times 6$ ins. 12 ins. in the
ground for $\frac{1}{2}$ mile corner marked $\frac{1}{2}$ M. on
SW. face and raised mound of stone 2 ft.
high $4\frac{1}{2}$ ft. base alongside from which
bears

A fir 12 ins. diam. S. 50° E. 43 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 24 ins. diam. N. 50° W. 34 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. 66° $15'$ E.

Var. 21° $28'$ E.

Yakima Indian Reservation.

Ascending through open timber.

- 45.87 Intersect pine 20 ins. diam.
50.00 Top of high ridge small spur bears S.
through open timber.

436 *The Northern Pacific Railway Co. et al.*

58.50 Set sandstone 18x12x12 ins. 12 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high 4½ ft. base alongside from which bears

A fir 10 ins. diam. N. 41° 45' E. 25 lks. dist.

Marked Y. I. R. B. T.

A black pine 12 ins. diam. S. 131½° E. 34 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 23° E.

Var. 21° 28' E.

60.00 Descend a blazed trail 1 ch. E.

72.53 Tamarack 18 ins. diam.

75.50 Set sandstone 18x12x10 ins. 12 ins. in the ground marked Y. I. R. on said facing the reservation and raised mound of stone 2 ft. high 4½ ft. base alongside, from which bears

A tamarack 18 ins. diam. S. 73° E. 32 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 61½° E.

Var. 21° 28' E.

80.00 Set post 6 ins. sq. 4½ ft. long 2 ft. in the ground for Ninetieth mile cor. marked 90 M. on SW. face Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, from which bears

A black pine 10 ins. diam. N. 84° E. 50 lks. dist.

Marked Y. I. R. 90 M. B. T.

A tamarack 20 ins. diam. S. 26° E. 26 lks.
dist.

Marked Y. I. R. 90 M. B. T.

Yakima Indian Reservation.

A tamarack 6 ins. diam. S. 75° W. 12 lks.
dist.

Marked 90 M. 1890 B. T.

A tamarack 8 ins. diam. N. 13° 47 lks. dist.

Marked 90 M. 1890 B. T.

Land mountainous; soil sandy loam 2d rate.
Timber pine, tamarack, fir and scattering
spruce all inferior; 14 chs. dense timber
and underbrush; bal. open good pine and
bunch grass.

Oct. 29th.

.....
At 7 A. M. Oct. 30th, by a back sight on line
run yesterday I find the magnetic bearing
to be S. 40° 00' W.

Var. 21½° E.

Being an increase of 2' by diurnal change.

Thence I run N. 70½° E. on Ninety-first
mile.

Var.

Along top of divide through open timber.

- 8.38 Red fir 60 ins. diam.
- 12.00 Ascend.
- 20.26 Trail bears N. and S.
- 22.60 Set sandstone 18x12x12 ins. 12 ins. in the
ground and raised mound of stone 2 ft.
high 4½ ft. base alongside stone marked

Y. I. R. on side facing the reservation
from which bears

A black pine 5 ins. diam. S. 25° E. 20 lks.
dist.

Marked Y. I. R. B. T.

A yellow pine 30 ins. diam. N. $61\frac{1}{2}^{\circ}$ W. 63 lks.
dist.

Marked Y. I. R. B. T.

Thence I run N. $56\frac{1}{4}^{\circ}$ E.

Var. $21\frac{1}{2}^{\circ}$ E.

40.00 Set stone 18x5x10 ins. 12 ins. in the ground
for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW.
face and raised mound of stone 2 ft. high

Yakima Indian Reservation.

$4\frac{1}{2}$ ft. base alongside, from which bears

A black pine 10 ins. diam. S. 13° E. 27 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

A pine 30 ins. diam. N. 20° W. 115 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. $54^{\circ} 45'$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

74.30 Set sandstone 18x15x10 ins. 12 ins. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of stone 2
ft. high $4\frac{1}{2}$ ft. base alongside, from which
bears

A black pine 12 ins. diam. S. $52\frac{1}{4}^{\circ}$ E. 49 lks.
dist.

Marked Y. I. R. B. T.

A tamarack 24 ins. diam. N. 80° W. 50 lks.
dist.

Marked B. T.

Thence I run N. 20° E.

Var. 21° 27' E.

Noon variation decreased 3' by diurnal change.

80.00 Set sandstone 18x18x12 ins. 12 ins. in the ground for Ninety-first mile cor. marked 91 M. on SW. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, and raised mound of stone 2½ ft. high 5 ft. base alongside, from which

brs.
A black pine 4 ins. diam. N. 32½° E. 49 lks. dist.

Marked 91 M. 1890 B. T.

A black pine 6 ins. diam. S. 81¾° E. 19 lks. dist.

Marked Y. I. R. 91 M. B. T.

A black pine 10 ins. diam. S. 72° W. 139 lks. dist.

Marked 91 M. 1890 B. T.

Yakima Indian Reservation.

A black pine 8 ins. diam. N. 53° W. 24 lks. dist.

Marked 91 M. 1890 B. T.

Land mountainous; soil sandy and stony poor 2d rate.

Pine fir tamarack and spruce of an inferior quality.

Good growth of bunch and pine grass.

The Topinish heads ½ mile east and flows S. and the south fork of the Simcoe flows NE.

.....

440 *The Northern Pacific Railway Co. et al.*

Thence I run N. 38° E. in Ninety-second mile.

Var. $21^{\circ} 27'$ E.

Along top of divide through open timber.

- 18.00 Set sandstone $18 \times 10 \times 10$ ins. 12 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A black pine 6 ins. diam. S. 89° W. 51 lks. dist.

Marked B. T.

A black pine 8 ins. diam. S. 18° W. 74 lks. dist.

Marked Y. I. R. B. T.

Enter small opening bears E. and W.

Thence I run N. 40° E.

Var. $21^{\circ} 27'$ E.

- 40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW. face from which bears

A tamarack 15 ins. diam. S. $34\frac{1}{4}^{\circ}$ E. 19 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A tamarack 10 ins. diam. S. 67° W. 21 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. $28\frac{1}{4}^{\circ}$ E.

Var. $21^{\circ} 35'$ E.

Change caused by local attraction.

- 57.90 Intersect black pine 15 ins. diam. which I marked Y. I. R. on side facing the reservation from which bears

Yakima Indian Reservation.

A black pine 10 ins. diam. N. $45\frac{1}{2}^{\circ}$ E. 15 lks.
dist.

Marked Y. I. R. B. T.

A black pine 10 ins. diam. S. $46\frac{1}{4}^{\circ}$ W. 41 lks.
dist.

Marked B. T.

Oct. 30th, 1890.

At 7 A. M., October 31st, by a back sight I
find the magnetic bearing to be S. $6^{\circ} 37'$
W., and the variation $21^{\circ} 38' E.$, being an
increase of $3'$ by diurnal change.

Thence I run N. $71\frac{1}{2}^{\circ}$ E.

Var. $21^{\circ} 38' E.$

80.00 Set pine post 6 ins. sq. $41\frac{1}{2}$ ft. long 24 ins. in
the ground for Ninety-second mile cor.
marked 92 M. on SW. face, Y. I. R. on side
facing the reservation and on opposite side
U. S. P. L. 1890, from which bears
A tamarack 24 ins. diam. N. $41\frac{1}{2}^{\circ}$ E. 63 lks.
dist.

Marked Y. I. R. 92 M. B. T.

A tamarack 8 ins. diam. S. 21° E. 44 lks.
dist.

Marked Y. I. R. B. T. and 92 M.

A black pine 5 ins. diam. S. 29° W. 36 lks.
dist.

Marked 92 M. 1890 B. T.

A fir 24 ins. diam. N. 24° W. 22 lks. dist.

Marked 92 M. 1890 B. T.

Land mountainous and rolling mountaintop.
Timber black and yellow pine, tamarack and

442 *The Northern Pacific Railway Co. et al.*

fir and scattering spruce all inferior; good growth of bunch and pine grass; soil light and sandy loam, with scattering patches of stone 3rd rate.

.....

Yakima Indian Reservation.

Thence I run N. $38\frac{1}{2}^{\circ}$ E. on Ninety-third mile.

Var. $21^{\circ} 38'$ E.

Along top of divide through open timber.

29.08 Intersect line bet. secs. 1 and 6 Tp. 10 N. rgs. 13 and 14 E.

Made diligent search 8 chs. S. for cor. to secs. 1, 6, 7, and 12 but could discover no trace of it.

40.00 Set sandstone $24 \times 15 \times 4$ ins. 18 ins. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW. face and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A black pine 10 ins. diam. S. $61\frac{1}{4}^{\circ}$ E. 120 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A black pine 10 ins. diam. N. 57° W. 121 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

This cor. is in a small opening.

Thence I run N. $73\frac{1}{2}^{\circ}$ E.

Var. $21\frac{1}{2}^{\circ}$ E.

Change caused by local attraction. From the $\frac{1}{2}$ mile cor. the sharp peak of Mt. Adams bears S. $57^{\circ} 27'$ W.

- 62.60 Set sandstone 18x12x8 ins. 12 ins. in the ground marked Y. I. R. on side facing the Reservation and raised mound of stone 2 ft. high 4½ ft. base alongside, from which bears

A tamarack 12 ins. diam. N. 34 lks. dist.

Marked B. T.

A tamarack 18 ins. diam. S. 6° 45' W. 38 lks. dist.

Marked B. T.

Thence I run N. 61° E.

Var. 21½° E.

- 80.00 Set post 7 ins. sq. 5½ ft. long 24 ins. in the ground for Ninety-third mile corner marked 93 M. on SW. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, and raised mound of stone 2 ft. high 5 ft. base around post from which Yakima Indian Reservation.

bears

A fir 12 ins. diam. N. 75½° E. 33 lks. dist.

Marked Y. I. R. 93 M. B. T.

A fir 15 ins. diam. S. 82° E. 38 lks. dist.

Marked Y. I. R. 93 M. B. T.

A black pine 6 ins. diam. S. 21½° W. 16 lks. dist.

Marked Y. I. R. 93 M. B. T.

A tamarack 15 ins. diam. N. 72¼° W. 49 lks. dist.

Marked 93 M. 1890 B. T.

Land rolling top of high mountain.

Soil sandy loam rocky in places 3d rate.

444 *The Northern Pacific Railway Co. et al.*

Timber pine tamarack and fir in scattering patches, with scattering patches of willow mountain sage.

Good bunch and pine grass.

.....
Thence I run N. $55\frac{1}{2}^{\circ}$ E. on ninety-fourth mile.

Var. $21^{\circ} 34'$ E.

Change caused by local attraction.

Along top of divide through open timber.

10.00 Trail bears E. and W. and enter small prairie bears E. and W.

15.39 From this point a peak on the Cascade range called Goat Rock bears N. $62^{\circ} 55'$ W.

29.00 Enter dense black pine timber bears E. and W.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground with sandstone $18 \times 15 \times 10$ ins. 12 ins. in the ground for $\frac{1}{2}$ mile corner, both marked $\frac{1}{2}$ M. on SW. face, from which bears

A tamarack 18 ins. diam. S. 63° E. 154 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A tamarack 28 ins. diam. N. $82\frac{1}{4}^{\circ}$ W. 96 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Yakima Indian Reservation.

Oct. 31, 1890.

At 7 A. M., November 1st, by a back sight on line run yesterday, I find the magnetic

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bearing to be S. $33^{\circ} 53'$ W. and the variation $21^{\circ} 37'$ E.

Thence I run N. $67\frac{1}{4}^{\circ}$ E.

Var, $21^{\circ} 37'$ E.

Descend gradually.

- 64.10 Set sandstone 20x20x15 ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside from which bears

A fir 24 ins. diam. N. $82\frac{1}{4}^{\circ}$ W. 30 lks. dist.

Marked B. T.

Thence I run N. $86\frac{1}{2}^{\circ}$ E.

Var. $21^{\circ} 37'$ E.

Descend gradually.

- 75.63 Trail bears SE. and NW.

- 80.00 Set sandstone 30x12x10 ins. 24 ins. in the ground for Ninety-fourth mile corner, marked 94 M. on W. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raise mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which brs.

A tamarack 28 ins. diam. N. 45° E. 133 lks. dist.

Marked 94 M. 1890 B. T.

A black pine 12 ins. diam. S. $51^{\circ} 45'$ E. 129 lks. dist.

Marked Y. I. R. 94 M. B. T.

A pine 15 ins. diam. S. 55° W. 96 lks. dist.

Marked Y. I. R. 94 M. B. T.

A pine 4 ins. diam. N. $57\frac{1}{2}^{\circ}$ W. 17 lks. dist.

Marked 94 M. 1890 B. T.

Land mountainous and rolling; scattering pine tamarack and fir timber inferior 61 chs; prairie 19 chs. soil stony in patches Yakima Indian Reservation.

2d rate; good bunch and pine grass.

.....
Thence I run N. $75\frac{1}{2}^{\circ}$ E. on Ninety-fifth mile.

Var. $21^{\circ} 37'$ E.

Over rolling land along top of divide through open timber.

6.00 Trail bears N. and SW.

9.20 Set sandstone $20 \times 15 \times 5$ ins. 15 ins. in the ground, marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A tamarack 18 ins. diam. S. $51\frac{1}{4}^{\circ}$ W. 60 lks. dist.

Marked Y. I. R. B. T.

A spur bears N. 75° E. bet. S. and middle fork of the Simcoe.

Thence I run N. $71\frac{1}{2}^{\circ}$ E.

Var. $21^{\circ} 35'$ E.

10 A. M., variation decreased 2' by diurnal change.

26.00 Descend.

28.50 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground, marked Y. I. R. on side facing the reservation, from which bears

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A tamarack 10 ins. diam. N. $59\frac{1}{2}^{\circ}$ E. 13 lks.
dist.

Marked Y. I. R. B. T.

A tamarack 20 ins. diam. S. $66\frac{1}{2}^{\circ}$ W. 68 lks.
dist.

Marked B. T.

Thence I run N. $11\frac{1}{2}^{\circ}$ W.

Var. 21° $35'$ E.

Descend gradually.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long, 2 ft. in the
ground for $\frac{1}{2}$ mile, cor. marked $\frac{1}{2}$ M. on
SE. face from which bears

A pine 18 ins. diam. N. $85\frac{1}{4}^{\circ}$ E. 91 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Yakima Indian Reservation.

A pine 18 ins. diam. S. 51° W. 19 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Thence I run N. $21\frac{1}{2}^{\circ}$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

Change caused by local attraction

Over rolling land top of divide.

54.93 Intersect fir 12 ins. diam., which I marked
Y I R. on side facing the reservation from
which bears

A fir 12 ins. diam. S. $48\frac{1}{2}^{\circ}$ E. 14 lks. dist.

Marked Y. I. R. B. T.

A fir 15 ins. diam. S. 45° W. 4 lks. dist.

Marked B. T.

Thence I run North.

Var. $21\frac{1}{2}^{\circ}$ E.

66.59 Fir 30 ins. diam.

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69.00 Foot of descent head of middle fork of
Simcoe about 5 chs. E. flows E.

73.80 Set pine 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the
ground marked Y. I. R. on side facing the
reservation from which bears

A pine 28 ins. diam. N. $15\frac{3}{4}^{\circ}$ E. 56 lks. dist.

Marked Y. I. R. B. T.

A black pine 5 ins. diam. N. 46° W. 40 lks.
dist.

Marked B. T.

Thence I run N. 37° E.

Var. 20° E.

Change caused by local attraction.

Over rolling land through open timber.

80.00 Set sandstone $28 \times 20 \times 6$ ins. 20 ins. in the
ground for Ninety-fifty mile cor. marked
95 M. on SW. face, Y. I. R. on side facing
the reservation and on opposite side U. S.
P. L. 1890, and raised mound of stone 2
ft. high $4\frac{1}{2}$ ft. base alongside from which
bears

A yellow pine 30 ins. diam. N. $71\frac{3}{4}^{\circ}$ E. 140
lks. dist.

Marked Y. I. R. 95 M. B. T.

Yakima Indian Reservation.

A black pine 15 ins. diam. S. $32\frac{1}{2}^{\circ}$ E. 114 lks.
dist.

Marked Y. I. R. 95 M. B. T.

A black pine 12 ins. diam. S. $73\frac{1}{4}^{\circ}$ W. 150
lks. dist.

Marked Y. I. R. 95 M. B. T.

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A yellow pine 28 ins. diam. N. $20\frac{1}{2}^{\circ}$ W. 108 lks. dist.

Marked 95 M. 1890 B. T.

Land mountainous and rolling. Timber pine, fir, tamarack and scattering spruce, all inferior; small patches of underbrush of same; soil sandy loam, with scattering stony patches 2d rate; good bunch and pine grass.

.....
Thence I run N. 37° E. on Ninety-sixth mile.

Var. $21\frac{1}{2}^{\circ}$ E.

Change caused by local attraction.

Along top of divide through open timber.

13.00 Trail bears E. and W.

14.40 Set sandstone 18x18x12 ins. 12 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A black pine 8 ins. diam. N. $29\frac{1}{2}^{\circ}$ W. 47 lks. dist.

Marked B. T.

A black pine 8 ins. diam. S. $28\frac{1}{2}^{\circ}$ W. 6 lks. dist.

Marked B. T.

Thence I run N. $14\frac{1}{2}^{\circ}$ W.

Var. $21\frac{1}{2}^{\circ}$ E.

27.50 Set sandstone 2x18x5 ins. 18 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft.

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high $4\frac{1}{2}$ ft. base alongside, from which
bears

A fir 24 ins. diam. N. 15° W. 32 lks. dist.

Marked Y. I. R. B. T.

Yakima Indian Reservation.

A black pine 10 ins. diam. S. $14\frac{1}{2}^{\circ}$ W. 62
lks. dist.

Marked B. T.

Nov. 1st, 1890.

At 7 A. M. Nov. 2d, 1890, by back sight on line
run yesterday, I find the magnetic bearing
to be $36^{\circ} 03'$ E. and the variation $21^{\circ} 33'$ E.

Thence I run N. $51\frac{1}{2}^{\circ}$ W.

Var. $21^{\circ} 33'$ E.

40.00 Set sandstone $24 \times 18 \times 6$ ins. 18 ins. in the
ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on
SE. face and raised mound of stone 2 ft.
high $4\frac{1}{2}$ ft. base alongside from which
bears

A pine 30 ins. diam. S. 42° E. 33 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A tamarack 24 ins. diam. N. 70° W. 26 lks.
dist.

Marked $\frac{1}{2}$ M. B. T.

50.70 Set sandstone $24 \times 18 \times 12$ ins. 20 ins. in the
ground marked Y. I. R. on side facing the
reservation and raised mound of stone 2
ft. high $4\frac{1}{2}$ ft. base alongside, from which
bears

A black pine 15 ins. diam. S. 86° E. 24 lks.
dist.

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Marked Y. I. R. B. T.

A black pine 8 ins. diam. N. $65\frac{1}{2}^{\circ}$ W. 33 lks.
dist.

Marked B. T.

Thence I run N. $32\frac{1}{2}^{\circ}$ W.

Var. $21^{\circ} 33'$ E.

Over rolling land.

72.00 Ascend gradually.

80.00 Set post 8 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the
ground for Ninety-sixth mile cor. marked
96 M. on SE. face, Y. I. R. on side facing
the reservation and on opposite side U. S.
P. L. 1890, from which brs.

Yakima Indian Reservation.

A tamarack 20 ins. diam. N. $41\frac{1}{2}^{\circ}$ E. 105 lks.
dist.

Marked Y. I. R. 96 M. B. T.

A pine 5 ins. diam. S. $48\frac{3}{4}^{\circ}$ E. 98 lks. dist.

Marked Y. I. R. 96 M. B. T.

A pine 18 ins. diam. S. 85° W. 91 lks. dist.

Marked 96 M. 1890 B. T.

A pine 18 ins. diam. N. 44° W. 91 lks. dist.

Marked 96 M. 1890 B. T.

Land mountainous; soil sandy loam 2d rate.
Timber; pine, tamarack and fir, some yellow
pine, suitable for milling; bal. inferior;
good bunch and pine grass.

.....
Thence I run N. 25° W. on Ninety-seventh
mile.

Var. $21^{\circ} 33'$ E.

Ascend gradually along top of divide through
open timber.

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36.80 Set sandstone 15x15x8 ins. 11 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A tamarack 24 ins. diam. N. 31° E. 47 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $82\frac{1}{2}^{\circ}$ W.

Var. $21^{\circ} 33'$ E.

Ascend steep mountain along top of narrow ridge.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 2 ft. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on E. face from which bears

A fir 22 ins. diam. N. 22° E. 19 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A fir 20 ins. diam. S. $47\frac{1}{2}^{\circ}$ E. 15 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Yakima Indian Reservation.

46.71 Tamarack 36 ins. diam.

60.50 Set sandstone 18x18x10 ins. 12 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside. No trees within limits.

Thence I run N. 89° W.

Var. $21\frac{1}{2}^{\circ}$ E.

5 P. M., variation decreased 3' by diurnal change Ascend

80.00 Set post 7 ins. sq. $5\frac{1}{2}$ ft. long 24 ins. in the ground for Ninety-seventh mile corner, marked 97 M. on E. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890 and raised mound of stone 2 ft. high 5 ft. base around post, from which brs.

A black pine 28 ins. diam. N. 68° E. 135 lks. dist.

Marked Y. I. R. 97 M. B. T.

A pine 6 ins. diam. S. 14° E. 157 lks. dist.

Marked 97 M. 1890 B. T.

A black pine 18 ins. diam. N. 74° W. 65 lks. dist.

Marked Y. I. R. 97 M. B. T.

No other trees within limits.

1st mile soil loam 2d rate; bal. rocky 3d rate;

Scattering pine fir and tamarack inferior; good bunch and pine grass; scattering mountain sage.

Nov. 2, 1890.

.....
At 7 A. M. Nov. 3d, by a back sight on line run yesterday I find the magnetic bearing to be N. $69^{\circ} 27'$ E. and the variation $21^{\circ} 33'$ E.

Thence I run N. $81\frac{1}{4}^{\circ}$ W. on Ninety-eighth mile.

Var. $21^{\circ} 33'$ E.

Along top of divide ascending.

Yakima Indian Reservation.

14.10 Set basalt $20 \times 20 \times 20''$ 15 ins. in the ground

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marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears
A black pine 10 ins. diam. N. 29° E. 94 lks. dist.

Marked Y. I. R. B. T.

From this point the sharp peak of Mt. Adams bears S. $51^{\circ} 39'$ W.

Thence I run N. $38\frac{1}{2}^{\circ}$ W.

Var. $21^{\circ} 33'$ E.

Along top of divide.

35.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground marked Y. I. R. on side facing the reservation from which bears

A spruce 8 ins. diam. S. $71\frac{1}{2}^{\circ}$ E. 38 lks. dist.

Marked Y. I. R. B. T.

A spruce 10 ins. diam. S. $24\frac{3}{4}^{\circ}$ W. 9 lks. dist.

Marked B. T.

Thence I run N. 43° E.

Var. $21^{\circ} 33'$ E.

This point is on top of high mountain. A spur bears S. 20° W.

Descend gradually, to sag.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground for $\frac{1}{2}$ mile corner marked $\frac{1}{2}$ M. on SW. face, from which bears

A spruce 8 ins. diam. S. 50° E. 20 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A spruce 12 ins. diam. N. $73\frac{1}{2}^{\circ}$ W. 38 lks. dist.

Marked $1\frac{1}{2}$ M. B. T.

47.00 Sheep corral 100 ft. diam.

Ascend gradually; headwaters of Simcoe creek flows South E. one stream flows NW. into the Klickitat.

54.90 Set sandstone 24x10x10 ins. 18 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft.

Yakima Indian Reservation.

high $4\frac{1}{2}$ ft. base alongside from which bears

A balsam fir 5 ins. diam. N. $89\frac{1}{2}^{\circ}$ E. 11 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $62^{\circ} 45'$ E.

Var. $21\frac{1}{2}^{\circ}$ E.

Noon variation decreased 3' by diurnal change.

68.85 Set sandstone 20x15x18 ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone alongside 2 ft. high $4\frac{1}{2}$ ft. base from which bears

A pine 4 ins. diam. S. 83° E. 10 lks. dist.

Marked Y. I. R. B. T. '

A black pine 18 ins. diam. N. $38\frac{1}{4}^{\circ}$ W. 64 lks. dist.

Marked B. T.

Thence I run N. 36° E.

Var. $21\frac{1}{2}^{\circ}$ E.

80.00 Set sandstone 24x20x15 ins. 18 ins. in the ground for Ninety-eight mile corner

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marked 98 M. on SW. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, and raised mound of stone $2\frac{1}{2}$ ft. high 5 ft. base alongside, from which
brs.

A black pine 12 ins. diam. N. $67\frac{3}{4}^{\circ}$ E. 25 lks. dist.

Marked Y. I. R. 98 M. B. T.

A black pine 10 ins. diam. S. $131\frac{1}{4}^{\circ}$ E. 39 lks. dist.

Marked Y. I. R. 98 M. B. T.

A black pine 8 ins. diam. S. 50° W. 52 lks. dist.

Marked 98 M. 1890 B. T.

A black pine 8 ins. diam. N. $41\frac{1}{4}^{\circ}$ W. 64 lks. dist.

Marked 98 M. 1890 B. T.

Land mountainous; soil loam and stony 3d rate.

Timber short stunted black pine fir and tam-
Yakima Indian Reservation.

arack, all inferior, with underbrush of the same and some fallen timber; scattering mountain sage, fair growth of bunch and pine grass.

.....
Thence I run N. 19° E. on Ninety-ninth mffe.

Var. $21\frac{1}{2}^{\circ}$ E.

Along top of divide through dense black pine timber.

10.90 Set sandstone 36x15x12 ins. 28 ins. in the ground marked Y. I. R. on side facing the

vs. The United States of America. 457

reservation and raised mound of stone 2 ft. high, $4\frac{1}{2}$ ft. base alongside, from which bears

A black pine 12 ins. diam. N. 80° E. 44 lks. dist.

Marked Y. I. R. B. T.

A black pine 10 ins. diam. N. $44\frac{1}{2}^{\circ}$ W. 63 lks. dist.

Marked B. T.

Thence I run N. 45° E.

Var. $21\frac{1}{2}^{\circ}$ E.

24.43 Black pine 36 ins. diam.

40.00 Set post 6 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on SW. face from which bears

A black pine 10 ins. diam. S. 24° E. lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A black pine 15 ins. diam. N. $88\frac{1}{4}^{\circ}$ W. 10 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

Ascend gradually.

49.57 Highest point on the Yakima Indian Reservation Mt. Adams bears S. $49^{\circ} 04'$ W. and Goat Rock bears N. $76^{\circ} 30'$ W.

52.40 Set sandstone $20 \times 15 \times 10$ ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A black pine 12 ins. diam. N. $29\frac{1}{4}^{\circ}$ E., 30 lks. dist.

Marked Y. I. R. B. T.

Yakima Indian Reservation.

A black pine 28 ins. diam. N. $57\frac{3}{4}^{\circ}$ W. 80 lks.
dist.

Marked B. T.

Nov. 3d, 1890.

At 7 A. M. Nov. 4th, 1890, by a back sight on
line run yesterday I find the magnetic
bearing to be S. 23° W. and the variation
 22° E. change caused by local attraction.

Thence I run N. $23\frac{1}{4}^{\circ}$ West.

Var. 22° E.

Descend to saddle; the divide between the
Antahnum and Simcoe bears N. 63° E.

80.00 Set post 7 ins. sq. $4\frac{1}{2}$ ft. long 24 ins. in the
ground for Ninety-ninth mile cor. marked
99 M. on SE. face, Y. I. R. on side facing
the reservation and on opposite side U. S.
P. L. 1890, from which brs.

A black pine 8 ins. diam. N. $78\frac{1}{2}^{\circ}$ E. 7 lks.
dist.

Marked Y. I. R. 99 M. B. T.

A black pine 5 ins. diam. S. $21\frac{1}{4}^{\circ}$ E. 6 lks.
dist.

Marked 99 M. 1890 B. T.

A black pine 20 ins. diam. S. $75\frac{1}{2}^{\circ}$ W. 6 lks.
dist.

Marked 99 M. 1890 B. T.

A black pine 5 ins. diam. N. 13° W. 18 lks.
dist.

Marked Y. I. R. 99 M. B. T.

Land mountainous; soil stony in places 3d
rate.

Short stunted black pine, tamarack and balsam inferior.

Fair growth of pine and bunch grass.

From this point a range of mountains bears N. 43° W. and connects with the main range.

.....
Thence I run N. 1° W. on One hundredth mile.

Var. 21° 33' E.

Yakima Indian Reservation.

Change caused by local attraction.

Descend and leave the divide; enter the canyon of the southern tributary of the Ahtahnum.

- 15.90 Set post 6 ins. sq. 4½ ft. long 24 ins. in the ground marked Y. I. R. on side facing the reservation, from which bears
A fir 6 ins. diam. N. 29° E. 67 lks. dist.

Marked B. T.

Thence I run N. 60° E.

Var. 21° 33' E.

- 18.70 Set sandstone 18x15x10 ins. 12 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high 4½ ft. base alongside, from which bears

A fir 20 ins. diam. S. 51° E. 24 lks. dist.

Marked Y. I. R. B. T.

A balsam 15 ins. diam. S. 63½° W. 32 lks. dist.

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Marked B. T.

This point is at the head of the south fork of the Ahtahnum where the water begins to flow.

Thence I run S. $65\frac{1}{2}^{\circ}$ E. down the right bank.

Var. $21^{\circ} 33'$ E.

Through dense fir, tamarack and black pine.

31.90 Spruce 30 ins. diam.

34.10 Set basalt $20 \times 15 \times 12$ ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears A balsam 6 ins. diam. N. $24\frac{3}{4}^{\circ}$ E. 4 lks. dist.

Marked B. T.

A balsam 6 ins. diam. S. $78\frac{1}{4}^{\circ}$ E. 11 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. $63\frac{1}{2}^{\circ}$ E.

Var. 21° E.

Noon decreased $3'$ by diurnal change.

36.96 Set basalt $18 \times 15 \times 15$ ins. 12 ins. in the ground

Yakima Indian Reservation.

marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

No trees.

Thence I run East.

Var. $21\frac{1}{2}^{\circ}$ E.

40.00 Set basalt stone $24 \times 10 \times 8$ ins. 18 ins. in the ground for $\frac{1}{2}$ mile cor. marked $\frac{1}{2}$ M. on W. face and raised mound of stone 2 ft.

vs. The United States of America. 461

high $4\frac{1}{2}$ ft. base alongside, from which bears

A spruce 18 ins. diam. N. $41\frac{1}{2}^{\circ}$ E. 18 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

A spruce 15 ins. diam. S. 4° E. 21 lks. dist.

Marked $\frac{1}{2}$ M. B. T.

- 41.40 Set basalt stone $20 \times 18 \times 15$ ins. 15 ins. in the ground marked Y. I. R. on side facing the reservation, and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A fir 10 ins. diam. S. 63° W. 15 lks. dist.

Marked Y. I. R. B. T.

Thence I run S. $66\frac{1}{2}^{\circ}$ E.

Var. $21\frac{1}{2}^{\circ}$ E.

- 47.40 Set basalt stone $30 \times 12 \times 12$ ins. 24 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

A spruce 18 ins. diam. N. $48\frac{1}{2}^{\circ}$ E. 10 lks. dist.

Marked B. T.

Thence I run S. 86° E.

Var. $21\frac{1}{2}^{\circ}$ E.

- 51.06 Set basalt stone $15 \times 12 \times 12$ ins. 10 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone 2 ft. high $4\frac{1}{2}$ ft. base alongside, from which bears

Yakima Indian Reservation.

A spruce 20 ins. diam. N. 60° W. 7 lks. dist.

Marked B. T.

Thence I run S. 73° E.

Var. 21½° E.

56.00 Spruce 36 ins. diam.

58.19 Spruce 20 ins. diam. which I marked Y. I. R.

on side facing the reservation from which bears

A fir 12 ins. diam. S. 53° E. 12 lks. dist.

Marked Y. I. R. B. T.

A fir 12 ins. diam. N. 59° W. 12 lks. dist.

Marked B. T.

Thence I run N. 63° E.

Var. 21° 32' E.

4 P. M. variation increased 2' by diurnal change.

63.00 Set basalt 24x18x10 ins. 18 ins. in the ground marked Y. I. R. on side facing the reservation and raised mound of stone, from which bears

A tamarack 20 ins. diam. bears East 8 lks. dist.

Marked Y. I. R. B. T.

Thence I run N. 45¼° E.

Var. 21° 32' E.

80.00 Set post 12 ins. sq. 4½ ft. long. 24 ins. in the ground for One Hundred mile corner, marked 100 M. on SW. face, Y. I. R. on side facing the reservation and on opposite side U. S. P. L. 1890, from which bears

A spruce 24 ins. diam. N. 20° E. 22 lks. dist.

Marked 100 M. 1890 B. T.

A balsam 10 ins. diam. S. 12½° E. 8 lks. dist.

vs. The United States of America. 463

Marked Y. I. R. 100 M. B. T.

A balsam 5 ins. diam. S. 44° W. 10 lks. dist.

Marked Y. I. R. 100 M. B. T.

A tamarack 24 ins. diam. N. 59½° W. 14 lks. dist.

Marked 100 M. 1890 B. T.

Land mountainous; soil rocky, 3d rate; steep hillsides. Dense growth of small black pine, spruce, fir, balsam, and tamarack, all inferior; fair growth of bunch and pine grass.

Yakima Indian Reservation.

Nov. 4th, 1890.

.....
.....
Field-notes from 100 mile corner to end of survey omitted from this transcript.

S. and W. Bdys. Yakima Indian Reservation.
Washington.

General Description.

This line from the Yakima River to the divide between the waters of the Satas and those flowing into the Columbia river passes over rolling sandhills covered with a heavy growth of sagebrush. Small tracts of this land could be cultivated but will require irrigation to produce crops and it would be difficult to bring water on to the land, owing to its elevation.

Thence it passes along the top of the divide where the land is broken and stony and not suitable for agricultural purposes.

On the twenty-sixth mile it enters scattering timber on top of the divide with heavier timber and bet-

ter quality in the ravines and on the ridges and spurs adjacent to it.

Up to the fifty-first mile corner there is no disagreement whatever regarding the location of the line, that I could learn. The line follows the top of a well-defined ridge acknowledged to be the true divide by both the whites and Indians with whom I conversed. The line in dispute is from the fifty-first mile "Onward" in a northerly direction. The Indians claim that the line passes along the top of a low ridge of hills bearing in a southwesterly direction and terminates at the Big Klickitat River and that this ridge should be a continuation of their southern boundary; upon the western end of said ridge there is a round hill called Gray Back mountain.

Thence it is claimed by the Indians the line bears in a northwesterly direction crossing the Klickitat River to the base of Mt. Adams.

From a consultation with Mr. Stabler, the U. S. Indian Agent at Fort Simcoe and from our understanding of the description of this boundary as given in the treaty of June, 1855, U. S. Statutes, *Vol.*, Page 961, I adopt this as the intended course and continue the line along top of the divide which bears in a northerly direction between the waters of the Satus and those flowing into the Klickitat river, passing through a country heavily timbered with first-class yellow pine; the land is chiefly valuable for its timber and grazing, being too dry and the soil too sandy for profitable agriculture.

At the seventy-seventh mile corner begin to ascend the Simcoe mountains whence flows the Piscoe or

Topinish river. All the Indians with whom I have talked concerning the boundary said that stream now known as the "Topinish" was in former times called "Piscoe." Said stream flows east into the Satas which emptied into the Yakima river a few miles below its confluence.

Thence I ran in a northerly direction along top of high mountain which is the divide between the Klickitat and the waters flowing into the Yakima river and is not the main range of the Cascade mountains which cannot be reached without crossing the Klickitat river.

I followed said divide to a low saddle where the southern tributary of the Ahtahnum heads and also a tributary of the Klickitat which flows west.

The main Klickitat heads in a northwesterly direction from this point where this divide connects with the main range of the Cascade mountains. Said range lies west of a north and south line that would pass south and east of Mt. Adams.

From the seventy-seventh mile corner the line passes along top of the Simcoe mountains which is chiefly valuable for its grazing, being too high and broken for agricultural purposes.

The timber is of an inferior quality being short and small in size.

From the headwaters of the southern tributary of the Ahtahnum, I ran down the right bank and intersected the corner to fractional sections 6 and 31 Tps. 11 and 12 North Rge. 15 E. Will. Mer. The only settlements near this boundary are a few scattering ranches from the thirteenth to the twenty-fifth mile.

GEORGE A. SCHWARTZ,
U. S. Deputy Surveyor.

4-699

DEPARTMENT OF THE INTERIOR,
Office of U. S. Surveyor-General,
State of Washington,

Olympia, Sept. 22, 1908.

I, E. P. Kingsbury, U. S. Surveyor-General for State of Washington, do hereby certify that the annexed Copy of the field notes of survey of the boundaries of the Yakima Indian Reservation, Washington, from the 47th to the 100th mile post, with the general description at the end of notes of said survey as made by George A. Schwartz, U. S. Deputy Surveyor in the months of September, October and November, 1890, under his contract No. 344, is a true and literal exemplification from the official field notes on file in this office.

E. P. KINGSBURY,
United States Surveyor General for Washington.
31382b2m9-07.

[Endorsement]: Filed in the U. S. Circuit Court Eastern District of Washington. Jun. 21, 1909.
Frank C. Nash, Clerk.

Defendant's Exhibit "C."

J. C. C.

DEPARTMENT OF THE INTERIOR.
WASHINGTON,

May 13, 1890.

The Commissioner of the General Land Office.

Sir: I transmit herewith copy of a communication of 9th instant from the Commissioner of Indian

Affairs, and accompanying petition of citizens of Klickitat County, Washington, relative to the survey of the southern and western boundaries of the Yakima Indian Reservation in said State.

In view of the facts stated and in accordance with the recommendation of the Commissioner, I have to direct that you cause contracts to be entered into for the survey and resurvey and marking of said boundary lines, as noted in the Commissioner's letter, the cost not to exceed for the re-survey for the 47½ miles, \$10 per mile; for the survey of 67½ miles along the ridges of the Cascade mountains \$25 per mile; for the preparation of plats and field notes in triplicate, \$200; and such amount as may be necessary for examination of survey,—the total cost not exceed the sum of \$3,200, as estimated by the Surveyor General of said State; payment to be made from the appropriation of \$10,000 made by the Act of March 2, 1889, (25 Stat. 998) for the survey and subdivision of Indian Reservations.

As this appropriation will not be available after June 30th proximo, early action in the matter is requested.

Very respectfully,
JOHN W. NOBLE,
Secretary. GC.

3066, Ind. Div. '90.

Two inclosures.

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35446-1889 (COPY)

5987

9578-1890.

DEPARTMENT OF THE INTERIOR.

OFFICE OF INDIAN AFFAIRS.

Washington, May 9th, 1890.

The Honorable, The Secretary of the Interior.

Sir: The Agent in charge of the Yakama Agency, Washington, having repeatedly recommended the survey of the Southern and Western Boundaries of the Yakama reservation, he was called upon, October 5, 1889, for a report as to the reasons which rendered such surveys necessary.

December 3, 1889, Agent Priestly replied to the effect that the Western boundary had never been surveyed; that the question as to which is the main ridge of the Cascade Mountains referred to in the treaty is a subject of disagreement, the Indians claiming that the main ridge extends to the base of Mount Adams on the south and east, white men with diverse interests claiming the said ridge to be further east.

As to the southern boundary he stated that it was believed that during the grazing season thousands of head of stock were pastured upon the reservation near the southern line, but as the owners of the stock insisted to the contrary, and as there were no means to show to the contrary, there was no remedy for the supposed injustice to the Indians.

He referred to the arrest and punishment of one of his police, on account of trouble growing out of the disputed location of this boundary.

February 25, 1890, I received a petition from citizens of Klickitat County, filed in the Department by Hon. John Wilson, in which they represent that they occupy lands adjoining the south boundary of the reservation; that they are outside of said reservation as defined in the treaty; that the Yakama Indians claim said lands and by their Agency police arrest settlers, take up their stock and charge pasturage, and by other means, harass, inconvenience, and annoy said settlers, until a very bad feeling has grown up between the settlers and Indians, which has resulted in trouble and will probably result in bloodshed the coming summer; that this trouble can be readily avoided by distinctly marking the boundary between said reservation and the adjoining public lands; and that said boundary has been marked for a distance of 48½ miles from the Yakama River and that no trouble occurs upon that portion of the reservation.

They earnestly request that the remainder of said boundary be surveyed, beginning at the 48½ mile-post and running thence on the treaty lines to the Ahtahum Creek, so as to prevent further trouble between the Indians and settlers.

In view of the above statement regarding the surveyed portion of the southern boundary, Agent Priestly was called upon, March 13, 1890, for further information and report, and asked whether the survey of the line westwardly and northerly from the west end of the surveyed line would not be sufficient.

In a reply, dated March 22, 1890, Agent Priestly states that while the records of his office show that the

line was surveyed in 1886, and plainly marked by posts at intervals of one-half mile, such posts are not now to be found for many consecutive miles; that he has looked in vain for such posts in the vicinity where the line is supposed to cross the Dalles and Yakima wagon road; that the Indian policemen, who have been instructed to search for and locate such posts, report that they are unable to find any; that last summer a delegation of residents of Klickitat County, including the sheriff were at the Agency incident to the arrest of one of the police, and to his inquiry not one of them, most of whom were stockmen and familiar with the country, could give him any information as to the location of any boundary posts, and none admitted that they had ever seen such posts; that this circumstance and the fact that the most frequent and serious troubles have been because of differences of opinion as to the southern boundary impelled him to state that there were no distinguishing marks to be found, and that a *marking* at least was necessary and that the statement of the citizens of Klickitat that there was no trouble on said line was a surprise to him in view of the contrary fact.

He further states that all the maps at his Agency show the reservation boundary to be very different from what it appears on the General Land Office map of 1887, and that such difference is vital and is the best evidence of the necessity for the survey suggested.

The southern boundary was surveyed from the Yakima River westward, a distance of $47\frac{1}{2}$ miles,

by Harry J. Clark in 1886.

If properly marked the line ought to be easily identified on the ground, but from Agent Priestly's report such does not appear to be the case. Nor is it surprising in view of the fact that the surveyor was paid but \$10 per mile for the survey.

I am of the opinion that this line should be plainly marked with desirable monuments and that the survey should be extended to the Ahtahnum River.

The boundaries of the reservation are described in the treaty of June 9, 1855 (12 Stats. 952), as follows:

"Commencing on the Yakima River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning."

The line to be re-run commences at a point on the main Yakama eight miles below the mouth of the Satass River and extends along the divide separating the waters of the Satass from those flowing into the Columbia, a distance of $47\frac{1}{2}$ miles. From this point the line to be surveyed extends along said divide to the divide between the waters of the Klicki-

tat and Pisco Rivers; thence along said divide to the spur whence flow the waters of said rivers; thence up said spur to the main ridge of the Cascade Mountains; thence northerly along said ridge, passing south and east of Mount Adams, to the southern tributary of the Attah-nam River.

The whole distance is estimated about 115 miles.

In his letter of December 3, 1889, Agent Priestly states that no river known as the Pisco is shown on any map, and that he has found no person white or Indian who has knowledge of any river of that name.

By comparing the diagram of a survey of the Yakama Reserve by Berry & Lodge, made in 1861, on file in this office, with the Land Office map of 1887, it is found that the river designated as the Toppenish on the map of 1887, is the Pisco referred to in the treaty. It is delineated on the diagram as rising about six miles, nearly due east of Mount Adams and a very short distance north of second Standard Parallel.

I have the honor to recommend that the Commissioner of the General Land Office be directed to cause the south and west boundaries of the Yakama Reservation, as above indicated, to be resurveyed and surveyed, the line to be marked at every half mile, where practicable, with conspicuous and durable monuments.

It is estimated that the cost should not exceed \$4000, including examination in the field and preparation of plats and field notes.

It is payable out of the appropriation of \$10,000 made by the Act of March 2, 1889 (25 Stats. 998)

for survey and subdivision of Indian Reservations, etc., of which a balance of some \$5,300 is available.

This matter has been considerably delayed by the correspondence necessary to elicit the facts. Action has also been postponed as it was thought possible that a more urgent need for the money might arise before the end of the fiscal year.

No such exigency has occurred, and as the balance will not be available after the 30th of next month, it is suggested that steps be taken to carry out the recommendations as to the survey of this reservation at an early day, so that the contract may be entered into before the end of the present fiscal year.

Very respectfully,

Your obedient servant,

R. V. BELT,

Acting Commissioner.

(Allen)

50564-1890

J. S. W.

M. M. R.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C. May 20, 1890.

Address only the

Commissioner of the General Land Office.

The U. S. Surveyor General,

Olympia, Washington,

Sir: Referring to your telegram of the 12th instant in answer to office telegram "E" of the 10th instant, submitting an estimate of the cost of resurveying and surveying the south and west boundaries

of the Yakima Indian Reservation in the State of Washington, you are advised as follows:

Under date of the 13th instant the Secretary of the Interior transmitted to this office a copy of a letter, dated May 9th, 1890, signed by the Commissioner of Indian Affairs, relative to the resurvey and survey of the southern and western boundaries of the Yakima Indian Reservation.

The Secretary also directs this office to cause contracts to be entered into for the resurvey and survey of the boundary lines, as noted in the Commissioner's letter, the cost of the resurvey of the 47½ miles not to exceed \$10 per mile, and the survey of 67½ miles along the ridges of the Cascade Mountains not to exceed \$25 per mile. The sum of \$200 is allowed for the preparation of the plats and field notes of said surveys in triplicate; also such an amount as may be necessary for the examination of the work in the field; the total cost of the survey not to exceed the sum of \$3,200 as per your said estimate, payment to be made from the appropriation of \$10,000 per act approved March 2, 1889 (25 Stats. 998) for the survey and subdivision of Indian Reservations.

In compliance with departmental directions you are hereby authorized to award to a competent and reliable deputy surveyor a contract for the resurvey and survey of the south and west boundaries of the Yakima Indian Reservation, as more particularly detailed in the letter of The Commissioner of Indian Affairs, dated May 9, 1890. The rates of mileage must not exceed those named in your telegram of the 12th instant.

The preparation of the plats and field notes (in triplicate) will be made in your office, for which the sum of \$200 is allowed. When the work shall have been executed you will transmit the proper vouchers therefor, the same to be submitted to the Indian office for payment.

The mode and manner of examining the work in the field will be determined hereafter, when the true field notes of survey have been submitted to your office.

In awarding this contract your attention is invited to the statements contained in the letter of the Commissioner relative to the former survey of the southern boundary line—47½ miles—purporting to have been executed by Harry A. Clark in 1886. The surveys herein authorized must be executed in strict conformity with existing regulations, and surveying instructions, and the contracting deputy will be held rigidly thereto.

Enclosed herewith are copies of the letters of the Secretary of the Interior and the Commissioner of Indian Affairs herein referred to.

As contracts payable from the appropriation of March 2, 1889 cannot legally be awarded after June 30th next, early action in this matter is requested.

Very respectfully,

LEWIS H. GROFF,
Commissioner.

DEPARTMENT OF THE INTERIOR,
General Land Office,

Washington, D. C., March 21, 1907.

I HEREBY CERTIFY THAT THE ANNEXED copy of letter dated May 13, 1890, from the Secretary of the Interior addressed to the Commissioner of the General Land Office and of the inclosure referred to therein; and of letter dated May 20, 1890, from the Commissioner of the General Land Office addressed to the U. S. Surveyor General of Washington; also copy of the plat of the resurvey of the East and South boundaries and the survey of part of the South and West boundaries of the Yakima Indian Reservation in Washington, are true and literal exemplifications of the original of said letter from the Secretary of the Interior and its inclosure, and of the official record of said letter to the U. S. Surveyor General of Washington, and of the official plat of said survey, in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Signed) R. A. BALLINGER,

Commissioner of the General Land Office.

[Seal of the Commissioner of the General Land Office.]

[Endorsements]: Defendants' Exhibit "C." Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

Defendants' Exhibit "E."

35446-1889

5987-1890

9578- "

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs,

Washington, May 9th, 1890.

The Honorable, The Secretary of the Interior,

Sir: The Agent in charge of the Yakama Agency, Washington, having repeatedly recommended the survey of the Southern and Western Boundaries of the Yakama Reservation, he was called upon, October 5, 1889, for a report as to the reasons which rendered such survey necessary.

December 3, 1889, Agent Priestly replied to the effect that the Western boundary had never been surveyed; that the question as to which is the main ridge of the Cascade Mountains referred to in the treaty is a subject of disagreement, the Indians claiming that the main ridge extends to the base of Mount Adams on the south and east, while men with diverse interests claiming the said ridge to be further east.

As to the southern boundary he stated that it was believed that during the grazing season thousands of head of stock were pastured upon the reservation near the southern line, but as owners of the stock insisted to the contrary, and as there were no means to show to the contrary, there was no remedy for the supposed injustice to the Indians.

He referred to the arrest and punishment of one of

his police, on account of trouble growing out of the disputed location of this boundary.

February 25, 1890, I received a petition from citizens of Klickitat County, filed in the Department by Hon. John Wilson, in which they represent that they occupy lands adjoining the south boundary of the reservation; that they are outside of said reservation as defined in the treaty; that the Yakama Indians claim said lands and by their Agency Police arrest settlers, take up their stock and charge pasturage, and by other means harass, inconvenience and annoy said settlers, until a very bad feeling has grown up between the settlers and Indians, which has resulted in trouble and will probably result in bloodshed the coming summer; that this trouble can be readily avoided by distinctly marking the boundary between said reservation and the adjoining public lands; and that said boundary has been marked for a distance of 48½ miles from the Kakama River and that no trouble occurs upon that portion of the reservation.

They earnestly request that the remainder of said boundary be surveyed, beginning at the 48½ mile post and running thence on the treaty lines to the Ahtahnum Creek, so as to prevent further trouble between the Indians and settlers.

In view of the above statement regarding the surveyed portion of the southern boundary, Agent Priestly was called upon, March 13, 1890, for further information and report, and asked whether the survey of the line westwardly and northerly from the west end of the surveyed line would not be sufficient.

In a reply, dated March 22, 1890, Agent Priestly

states that while the records of his office show that the line was surveyed in 1886, and plainly marked by posts at intervals of one half mile, such posts are not now to be found for many consecutive miles; that he has looked in vain for such posts in the vicinity where the line is supposed to cross the Dalles and Yakima wagon road; that the Indian policemen, who have been instructed to search for and locate such posts, report that they are unable to find any; that last summer, a delegation of residents of Klickitat County, including the sheriff were at the Agency incident to the arrest of one of the police, and to his inquiry not one of them, most of whom were stockmen and familiar with the country, could give him any information as to the location of any boundary posts, and none admitted that they had ever seen such posts; that this circumstance and the fact that the most frequent and serious troubles have been because of differences of opinion as to the southern boundary impelled him to state that there were no distinguishing marks to be found, and that a remarking at least was necessary, and that the statement of the citizens of Klickitat that there was no trouble on said line was a surprise to him in view of the contrary fact.

He further states that all the maps at his Agency show the reservation boundary to be very different from what it appears on the General Land Office map of 1887, and that such difference is vital and is the best evidence of the necessity for the survey suggested.

The southern boundary was surveyed from the Yakima River westward, a distance of 47½ miles, by

Harry J. Clark in 1886.

If properly marked the line ought to be easily identified on the ground, but from Agent Priestly's report such does not appear to be the case. Nor is it surprising in view of the fact that the surveyor was paid but \$10 per mile for the survey.

I am of the opinion that this line should be plainly marked with desirable monuments and that the survey should be extended to the Ahtahnum River.

The boundaries of the reservation are described in the treaty of June 9, 1855 (12 Stats., 952) as follows:

"Commencing on the Yakama River, at the mouth of the Attahnam River; thence westerly along said Attah-nam river to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning."

The line to be re-run commences at a point on the main Yakama eight miles below the mouth of the Satass River and extends along the divide separating the waters of the Satass from those flowing into the Columbia, a distance of $47\frac{1}{2}$ miles. From this point the line to be surveyed extends along said divide to the divide between the waters of the Klickitat and

Pisco Rovers; thence along said divide to the spur whence flow the waters of said rivers; thence up said spur to the main ridge of the Cascade Mountains; thence northerly along said ridge, passing south and east of Mount Adams, to the southern tributory of the Attah-nam river.

The whole distance is-estimated at about 115 miles.

In his letter of December 3, 1889, Agent Priestly states that no river known as the Pisco is shown on any map, and that he has found no person white or Indian who has knowledge of any river of that name.

By comparing the diagram of a survey of the Yakama Reserve by Berry & Lodge, made in 1861, on file in this Office, with the Land Office map of 1887, it is found that the river designated as the Toppenish on the map of 1887, is the Pisco referred to in the treaty. It is delineated on the diagram as rising about six miles, nearly due east of Mount Adams and a very short distance north of the second Standard Parallel.

I have the honor to recommend that the Commissioner of the General Land Office be directed to cause the south and west boundaries of the Yakama reservation, as above indicated, to be resurveyed and surveyed, the line to be marked at every half mile where practicable, with conspicuous and durable monuments.

It is estimated that the cost should not exceed \$4,000, including examination in the field and preparation of plats and field notes.

It is payable out of the appropriation of \$10,000 made by the Act of March 2, 1889 (25 Stat., 998) for

survey and subdivision of Indian reservations, &c., of which a balance of some \$5,300 is available.

This matter has been considerably delayed by the correspondence necessary to elicit the facts. Action has also been postponed as it was thought possible that a more urgent need for the money might arise before the end of the fiscal year.

No such exigency has occurred, and as the balance will not be available after the 30th of next month, it is suggested that steps be taken to carry out the recommendations as to the survey of this reservation at an early day, so that the contract may be entered into before the end of the present fiscal year.

Very respectfully,

Your obedient servant,

R. V. BELT,

Acting Commissioner.

(Allen)

[Endorsements]: Defendants' Exhibit "E." Filed in the U. S. Circuit Court for the Eastern District of Washington. June 21, 1909. Frank C. Nash, Clerk.

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs,

Washington, D. C., March 7th, 1907.

I, C. F. LARRABEE, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file in this Office.

IN TESTIMONY WHEREOF, I have hereunto

subscribed my name, and caused the seal of this Office to be affixed, on the day and year first above written.

(Signed) C. F. LARRABEE,
Acting Commissioner.

[Seal of Indian Office.]

[Endorsements]: Plaintiff's Exhibit "7." Defendants' Exhibit "E." Filed in the U. S. Circuit Court for the Eastern District of Washington. June 21, 1909. Frank C. Nash, Clerk.

Defendants' Exhibit "F."
United States Indian Service,
Yakima, Wash., Agency,
Fort Simcoe, Dec. 3rd, 1889.

Hon. T. J. Morgan,
Com. of Indian Affairs,
Washington, D. C.

Sir: I have the honor to reply to office letter 32577, dated Nov. 16th, 1889, inclosing letter 26180, dated October 5th, 1889, addressed to W. L. Stobles, asking for a report as to the necessity for survey of the western and southern boundaries of this reservation, &c.

The western boundary has I believe never been surveyed. It is described in the treaty as "along the main ridge of the Cascade Mountains, south and east of Mt. Adams to the spur whence flows the waters of the Klickitat and Pisco rivers." Which is the "main ridge" of the Cascade Mountains here referred to is a subject of disagreement. Indians claim the "main ridge" extends to the base of Mount Adams on the south and east. While white men with

diverse interests claim the "main ridge" referred to, to be farther east. No river known as the Pisco is shown on any map, and I have found no person, white or Indian, who has knowledge of any river of that name. All the country south and east of Mount Adams for 40 or 50 miles is regarded as part of the Cascade range—being wholly mountainous. In view of these facts alone I consider a survey of the western boundary necessary.

For reasons set forth in my annual report, I consider a re-survey and re-marking of the southern boundary of the reservation also necessary. During the past summer and grazing season it is believed that thousands of head of stock have pastured upon the reservation near the southern line, but the owners of the stock believing and insisting that they are not within the reservation, and there being no means of showing to the contrary, no remedy for the supposed injustice to the Indians was available. One of the Indian Policemen through this uncertainty as to the boundary line, was arrested and has been now about 3 months in jail at Goldendale. He attempted to drive some cattle from what he supposed to be reservation ground, a white man, with others stopped him from doing so, believing the cattle were not on the reservation. The Indian, it is said drew a pistol, (which was not loaded) and for that offense he was tried, found guilty *of course*, and punished to a degree far disproportionate to the offense. The increasing demand for pasturage, makes this question of boundary of greater importance yearly.

The distance to be surveyed and marked is ap-

proximately 80 miles. The work cannot be advantageously done in winter, but should begin as early as practicable in the Spring, commencing at the eastern boundary, on the Yakima River.

As stated in my letter of Sept. 7th, the Indians would be much better satisfied to have the survey made under direction of the General Land Office than by local surveyors, and I would so recommend.

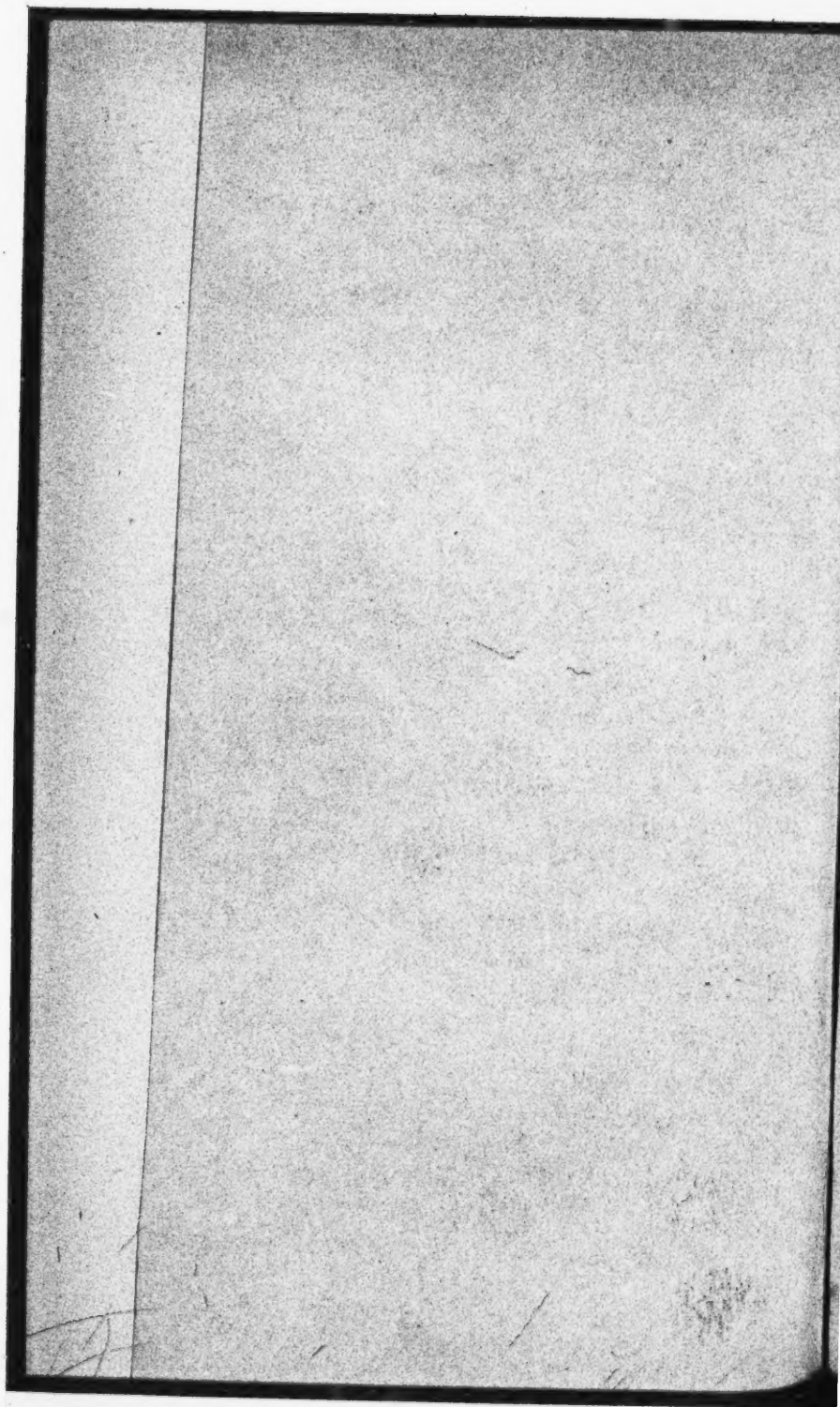
Very respectfully,

THOMAS PRIESTLY,

U. S. Indian Agent.

[Endorsements]: Defendants' Exhibit "F."
Filed in the U. S. Circuit Court for the Eastern
District of Washington, June 21, 1909. Frank C.
Nash, Clerk.





Defendants' Exhibit "G."

UNITED STATES INDIAN SERVICE,
Yakima, Wash. Agency,

Fort Simcoe, March 22d, 1890.

Hon. T. J. Morgan,
Com. of Indian Affairs,
Washington, D. C.

Sir: I have the honor to acknowledge your communication of the 13th inst., calling my attention to the fact that the southern boundary of this reservation was surveyed for a distance of $47\frac{1}{2}$ miles from the Yakima River by Harry J. Clark, in 1886; stating that citizens of Klickitat County request the survey of the south and west boundaries from the $47\frac{1}{2}$ mile-post to Ahtahnum Creek, representing that the south boundary has been marked for a distance of $48\frac{1}{2}$ ($47\frac{1}{2}$) miles from the Yakima River, "*and that no trouble occurs upon that part of the line*"; and asking me to fully explain the matter and report whether the survey of the line westwardly and northerly from said $47\frac{1}{2}$ mile-post to the Ahtahnum Creek, or northwest corner of the reservation will not be sufficient.

In this office also are records representing that the southern boundary from the Yakima River for a distance of $47\frac{1}{2}$ miles was surveyed in 1886 and *plainly marked* by posts set at intervals of $\frac{1}{2}$ mile. But it appears that such posts are not now to be found for many consecutive miles. I have myself looked in vain for such posts in the vicinity where

the line is supposed to cross the "Dalles and Yakima wagon road," Indian Policemen have been instructed to search for and locate such posts, but report that they are unable to find any.

Last summer a delegation of residents of Klickitat County, including the sheriff, were at the Agency, incident to the arrest of one of the Indian Police, referred to in my communication of Dec. 8d, and to my inquiry not one of those citizens, most of whom are stock men and familiar with the country, could give me any information as to the location of any boundary line posts, and none admitted that they had ever seen any such posts. This circumstance, and the fact that the most frequent and serious troubles have been because of differences of opinion as to the southern boundary, impelled me to ask that there were no distinguishing marks to be found, and that a *marking* was necessary, at least. The representations of citizens of Klickitat that there is no trouble on that line, is a surprise in view of contrary facts.

The map accompanying your communication is herewith returned. All other maps here show the reservation boundary to be much different from what it appears to be by this map. To show this difference, I submit sketch. Outlines of reservation and streams as appear by map herewith in *red* and outlines and streams as shown by all other maps, including map issued from war office in 1887, in *Black*. The difference is vital, and is the best evidence of a necessity for survey suggested. According to Dept. Interior map, the Agency sawmill is barely within

the reserve, as shown. According to other maps said sawmill is 12 to 15 miles within the lines south and west. War office map shows south boundary of reserve to be on Klickitat County line, while Interior Dept. map indicates reserve to extend 4 miles into said country.

In reference to whether a survey of northerly and westerly boundary, from 47½ mile-post will be sufficient, would say: If such post can be located, and the line thence traced back eastward and marked as far as *found necessary*, then a survey from said 47½ mile-post northerly and westerly to the Ahtahnum river, or northwest corner of reservation would seem to be sufficient.

Very respectfully,

THOMAS PRIESTLY,

U. S. Indian Agent.

[Endorsements]: Defendants' Exhibit "G."
Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs,

Washington, D. C., March 9th, 1907.

I, C. F. LARRABEE, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file in this Office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of this

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Office to be affixed, on the day and year first above written.

(Signed) C. F. LARRABEE,
Acting Commissioner.

[Seal of Office of Indian Affairs.]

[Endorsements]: Defendants' Exhibit "F." Defendants' Exhibit "G." Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

Defendants' Exhibit "H."

Olympia, Washington,
August 15th, 1891.

U. S. Surveyor General,
Thos. H. Cavanaugh,
Olympia, Wash'n.

Sir: In obedience to your instructions, dated July 22nd, 1891, to examine the re-survey and survey of the South and West Boundaries of the Yakima Indian Reservation, as surveyed by U. S. Deputy Surveyor Geo. A. Schwartz, under his contract No. 344, dated June 20, 1890, I respectfully report that:—

I proceeded from Olympia to N. Yakima via Str. "Bailey Gazert" and N. P. R. R. July 27, 1891, arriving that evening at N. Yakima.

On July 28th, I engaged as assistants, Frank Parke, Luiz Weinamy, and R. W. Smith. Two pack horses, and one horse for packer who acted as cook, procured provisions for four persons for fourteen days, camping materials, &c.

I had considerable difficulty in getting men and

horses, as this is the harvest season in the vicinity of N. Yakima. Also two irrigating ditches are being constructed in that vicinity, causing men and horses to be in demand.

I started the camp outfit on July 28th for Jack Morgan's ranche, near Mabton and the I. P. of the Survey.

On July 29th after procuring preliminary affidavits at N. Yakima, proceeded with one assistant to Mabton Via. N. P. R. R. arriving that P. M. and finding the I. P. of the survey as described in the Field Notes.

The camp outfit not arriving, I had to stop the night of July 29th at Jack Morgan's Ranche.

Thence on the line—

From the I. P. to the crest of the divide of the water-shed of the Satas River and the Columbia, the line runs through a rolling country of sand hills, crossed by dry gulches, with evidences of running water in the wet season, becomes steeper and more broken as I reach the crest.

This country might become fertile if irrigated; but there are considerable Engineering difficulties to be overcome.

There is a thick growth of sage brush, and grease-wood, some bunch grass, some fine stock in view.

On the crest and following the divide stony and barren with sage brush and aparse bunch grass, with spots of good grazing on the slopes.

A view of the Klickitat Valley to Sd shows a fertile country with fair looking ranches in the vicinity of Bickleton.

About the 26th mile enter scattering timber of stunted *groth* and inferior quality which seems to be of a better quality in the ravines and hill sides making off from the divide. To the Reservation side the view is very uninviting from a settlers point of view.

See traces of the 1886 line which were obliterated by Mr. Schwartz so that there is no confusion in regard to the marks of the line as it now stands.

The line continues along the well-defined crest of the divide of the water-sheds of the Klickitat and Satas Rivers.

From what I can learn there is no question about the line up to about the 51st mile where a low ridge makes off in a S. W'y direction terminating at the Big Klickitat River near a peak known as Grey-back. The Indians claim that the line should follow this ridge to Gray Back, thence in a N. W'y direction to the foot of Mount Adams.

According to the topography of the country of which I had good views and studied carefully, such a line would include in the Reservation a large part of the water-shed of the Klickitat, would cross tributaries of the same and the Klickitat itself, which flows by the base of Grey Back as per Field Notes.

The line followed by Mr. Schwartz is strictly the dividing ridges and crests of the water-sheds of the Satas and the Klickitat.

The lower ridge mentioned is a sub-divide of the branches of the Klickitat.

From thence a timbered country, some yellow pine suitable for manufacturing purposes.

Land chiefly valuable for timber and grazing.

Soil, too dry and cold for agriculture.

Climate very cold at night affected by the snow on Mt. Adams near by.

At about the 77th mile commence ascending the Simcoe mountains where the Toppenish or Piscoe finds its head, and which flows E'y into the Yakima River.

Thence northerly along the crests of the dividing ridges of the Klickitat and Yakima River watersheds. This is evidently a sub-ridge of the Cascades. The main ridge being separated by the Klickitat.

The divide is strictly followed to a gap, where on the Reservation side heads an affluent of the South Fork of the Ahtahnum Creek and on the U. S. P. L. side heads a tributary of the Klickitat, not more than 20 chs. apart over the crest of the saddle of the gap.

The Ahtahnum stream coursing E'y and the Klickitat W'y.

This saddle connects with a ridge trending North-westerly to the main ridge of the Cascade Mts. To the Nd. in a deep canon heads the main South Fork of the Ahtahnum, flowing S. E'y.

Land heavily timbered and rough, chiefly valuable for grazing. This branch of the Ahtahnum follows a deep canon cut by cross canyons with steep sides. The climate is very cold at nights on the night of August 4th snow fell about 2 in. found frost several mornings.

The cold winds from the snowy peak of Mt. Adams visibly affect the climate.

The timber along the ridges is generally of a stunted growth inferior in quality but with some good milling pine along the side hills and in the valleys good fir, pine, spruce, tamarack, and some oak. Generally a dense growth of small woods. Alder, willow, dogwood, etc. Good grazing on side hills and in valleys.

Large bands of fine stock met with and evidences of extensive sheep-grazing.

Generally the land is not suitable for agricultural purposes.

From these headwaters the line meanders down rapidly a deep canon, and on the right bank of branch of south fork of the Ahtahnum continuing by where the main South fork joins it.

The only settlers close to the line a few ranches from the 1st to 17th mile. Had fine views of Bickleton, and Goldendale from the summits showing the Klickitat Valley dotted with good ranches, gave the appearance of a fine agricultural valley.

The reservation side looks sterile, though it can be made productive with irrigation as evidences about Yakima prove.

Judging from the topography of the country, the line strictly follows the divide of the water sheds of the Yakima and the Klickitat to the headwaters of the Ahtahnum branch.

I reached the terminal point, the cor. to Fractional sections 6 & 31, Ts. 11 & 12, Rg. 15 E. W. M. August 11th, 1891, from where I proceed to North Yakima.

On Aug. 12th took final affidavits and proceeded

via. N. P. R. R. to Olympia where I arrived Aug. 13th, 1891.

Great care has been taken and much skill used by Deputy Surveyor Schwartz in the establishment of this line.

One proof that it is on the true divide is I crossed no water in following it.

The work is carefully and skillfully done, all posts, stones, and mounds are of good size plainly visible, well set in the ground and very plainly marked in accordance with the instructions regulating the same.

The line is well blazed throughout and can be easily followed by a novice.

This is one of the best pieces of work I have seen.

Respectfully,

JACOB E. NOEL,

Examiner.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., October 21, 1908.

I HEREBY CERTIFY THAT THE ANNEXED copy of report of Jacob E. Noel, Examiner of Surveys, dated August 15, 1891, of his examination of the resurvey and survey by George A. Schwartz, under his contract No. 344, of the south and west boundary of the Yakima Indian Reservation in Washington, is a true and literal exemplification of said report on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office

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to be affixed, at the city of Washington, on the day and year above written.

(Signed) H. W. SAMPSON,

Recorder of the General Land Office.

[Seal of the Office of the General Land Office.]

[Endorsements]: Defendants' Exhibit "H."
Filed in the U. S. Circuit Court for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

Defendants' Exhibit "I."

E

123491-123767

E. O. S.

J. W. C.

1891

C. W. D.

J. E.

DEPARTMENT OF THE INTERIOR,

General Land Office,

Washington, D. C. October 21, 1891.

The U. S. Surveyor General,

Olympia, Washington,

Sir: With your letter dated September 22, 1891, were received the returns of the resurvey and survey of the south and west boundaries of the Yakima Indian Reservation, Washington, executed by George A. Schwartz, D. S., under his contract No. 344, dated June 20, 1890.

Also with your letter of same date was received the report of Jacob E. Noel, D. S., who made an examination of this survey in the field under his instructions, dated July 22, 1891.

Deputy Noel extended his examination over the entire line, and reports that "the work is carefully

and skillfully done, all the posts, stones, and mounds are of good size, plainly visible, well set in the ground and marked in accordance with the instructions regulating the same, the line is well blazed throughout and can be easily followed by a novice."

The field notes of the deputy have been examined and compared with the accompanying plat, from which it appears that the work has been executed in a satisfactory manner, in conformity with the contract and instructions, and I hereby accept the same.

Very respectfully,

THOS. H. CARTER,

Commissioner.

Department of the Interior,
U. S. Surveyor General's Office,
State of Washington.

Olympia, September 22, 1908.

I, E. P. Kingsbury, U. S. Surveyor General for the State of Washington, do hereby certify that the annexed letter from Thos. H. Carter, Commissioner, dated October 21, 1891, accepting the survey and re-survey of the South and West Boundary of the Yakima Indian Reservation, executed by George A. Schwartz, D. S., under Contract No. 344, dated June 20, 1890, is a true and correct copy of the original on file in this office.

(Signed) E. P. KINGSBURY,
U. S. Surveyor General, Washington.

[Endorsements]: Defendants' Exhibit "I." Filed in the Circuit Court of the United States for the Eastern District of Washington, June 21, 1909. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY

(a Corporation), et al.,

Defendants.

Order [Receiving Exhibits in Evidence, etc.].

The above-entitled cause having come on for hearing in the matter of entering the decree, and it appearing to the Court that proof of the survey of a part of the south and west boundaries of the Yakima Indian Reservation of 1908 has not been made a part of the record, and upon application of defendant that the case be opened for the purpose of making further proof, which motion the Court grants, and counsel for defendant having offered in evidence photographic copies of certain township plats bound in book form and marked "Defendants' Exhibit 'K, '"; also certified copies of letters of M. C. McFarland, Commissioner of the General Land Office, addressed to W. McMicken, United States Surveyor General, Olympia, Washington Ty., and Register and Receiver of the United States Land Office, Vancouver, Washington Ty., and dated March 25, 1884, and February 28, 1884 respectively, and marked "Defendants' Exhibit 'L' ":

Now, therefore, it is ORDERED that said exhibits be, and the same hereby are, received in evidence and made a part of the record in said cause.

Done in open court this 28th day of June, 1910.

(Signed) EDWARD WHITSON,

Judge.

[Endorsements]: Order Opening up Case for the Admission of Additional Proof by Defendants. Filed in the U. S. Circuit Court for the Eastern District of Washington, June 28th, 1910. Frank C. Nash, Clerk.

Defendants' Exhibit "L."

U. S. Surveyor-General's Office

Received

Apr. 4, 1884.

Olympia, Washington Terr'y.

DEPARTMENT OF THE INTERIOR,

General Land Office,

Washington, D. C., Feb. 28, 1884.

Register and Receiver,

U. S. Land Office,

Vancouver, Washington Ty.

Gentlemen: Referring to the treaty of June 9, 1855, between the U. S., and the Yakima Nation of Indians, Stats. 12, P. 951, Article 2 of which fixes the boundaries of the reservation to be retained by said Indians, according to certain rivers and divides, I have to say that an examination of the plats of the township surveys of Tp. 6 N., Rgs. 16, 17, 18 and 19, East of the Willamette Meridian, Washington Ty.,

indicates that the following described portions thereof fall within the said reservation because they appear to be situated North of the "Divide separating the waters of the Satass River from those flowing into the Columbia River," and said divide is the S. boundary of the reservation, as defined by treaty;

In Tp. 6 N., R. 16 E., Secs. 1, 2, 3, 4, the E. $\frac{1}{2}$ of Secs. 5, and 8, all of Secs. 9, 10, 11, 12, the North halves of Secs. 13, 14, and 16, and the NE. $\frac{1}{4}$ of Secs. 15 and 17.

In Tp. 6 N., R. 17 E., all of sections 1 to 15 inclusive and the north halves of sections 16, 17, 18 and 23.

In Tp. 6 N., R. 18 E., sections 1 to 18 inclusive and the North halves of sections 19, 20, 21, 22, 23 and 24.

In Tp. 6 N., R. 19 E., sections 3, 4, 5, 6, 7, 18; the N. $\frac{1}{2}$ and SW. $\frac{1}{4}$ Section 8; the N. halves of sections 9 and 10, and W. $\frac{1}{2}$ of Sec. 17.

In the absence of the Survey of said boundary, you will regard the above described tracts as within the reservation and make proper note of the same on the plats in your office, referring to this letter as your authority for it. You will also suspend all disposals of lands falling within limits indicated and you will acknowledge the receipt hereof.

Very respectfully,

(Signed) N. C. McFARLAND,

Commissioner.

DEPARTMENT OF THE INTERIOR,
Office of U. S. Surveyor-General,
State of Washington,
Olympia, April 19, 1910.

I, E. P. Kingsbury, U. S. Surveyor-General for Washington, do hereby certify that the annexed copy of a letter from the Commissioner of the General Land Office under date of March 25, 1884, transmitting copy of letter to the Register & Receiver of the U. S. Land Office, Vancouver, W. T., together with a copy of said copy, is a true and literal exemplification from the records on file in this office.

(Signed) E. P. KINGSBURY,
United States Surveyor-General for Washington.

[Endorsements]: Defendants' Exhibit "L." Filed in the U. S. Circuit Court for the Eastern District of Washington, June 28th, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), et al.,
Defendants.

Opinion.

A. G. AVERY, U. S. Atty.

**EDWARD J. CANNON and ARTHUR B.
LEE, for Defendants.**

WHITSON, District Judge.

By this suit the complainant, claiming to act for itself and on behalf of and as trustee and guardian for the Indians hereinafter mentioned, seeks the cancellation of fifty-five patents for lands issued by virtue of the Act of July 2, 1864 (13 Stat. L., 365), in part to the Northern Pacific Railroad Company and in part to the defendant Railway Company as its successor in interest.

It is stated in the defendants' brief that approximately 160,975.74 acres are involved, but since the patents before the Court embrace an acreage much less in amount, it is inferred that a decision may incidentally affect the title to lands other than those described. The amended bill proceeds upon the theory that the patents were issued upon the erroneous supposition that the railroad grant attached to the patented lands, whereas it is alleged that they were excepted from its operation by reason of the fact that they are within the boundaries of the Yakima Indian reservation and subject to the use and occupation of the Yakima Indian Nation, the Indian title never having been extinguished. The individual defendants hold under the patentees as purchasers, while the Mercantile Trust Company claims as trustee under a mortgage given to secure an issue of bonds by the Railway Company.

The manner and date of the establishment of the reservation and subsequent dealings with it are vital, for the issues primarily turn upon its true boundaries. An historical recital must precede an inquiry into the rights of the respective parties, hence the following summary which has been made as brief as the nature of the case seems to permit:

On the 9th day of June, 1855, General Isaac I. Stevens, then Governor and Superintendent of Indian Affairs of the Territory of Washington, at Camp Stevens, in the Walla Walla valley, concluded a treaty with some fourteen confederated tribes and bands of Indians, who, for the purposes of the treaty, it was agreed, were to be considered as one nation under the name of "Yakima," with Kamaiakun "as its head chief, on behalf of and acting for said tribes and bands," whereby said Indians ceded a large territory to the United States but reserved for themselves that portion of the country to which they laid claim, described in Article 2 of the treaty as follows:

"There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries, to wit: Commencing on the Yakima River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco Rivers; thence down said spur to the divide between

the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning."

This treaty was ratified on March 8, 1859, and was proclaimed on April 18 of the same year. Under date of April 30, 1857, Governor Stevens transmitted to the Commissioner of Indian Affairs, a map "of the Indian Nations and Tribes of the Territory of Washington and of the Territory of Nebraska West of the mouth of the Yellowstone," upon which appears, among many others, a tracing of the Yakima Indian reservation. An original map indicating the same boundaries, it seems was deposited with the archives of the Yakima Agency, which was designated as the "White Swan Map." (Plaintiff's Exhibit 6.) It bears the inscription, "I. I. Stevens' Map March 1857," and a copy in colors has been reproduced and admitted in evidence.

Article 2 of the treaty contains an agreement on the part of the Government to survey and mark out the reservation for the exclusive use of the Indians. If it has been remiss in the performance of this treaty stipulation, it certainly is not chargeable with failure in attempting to carry it out, as will presently appear.

A survey of the southern boundary was made in 1861 by Berry and Lodge under the direction of W. W. Miller, then Superintendent of Indian Affairs for

the Territory of Washington. The Superintendent's letter of instruction (Plaintiff's Exhibit 8), under date of September 10, 1861, contained the following:

"In making this survey you will commence on the Yakima River, where the 'divide' separating the waters of the Satass river from those flowing into the Columbia River, juts against said Yakima River, and proceed westerly along said 'divide,' and along the 'divide' between the Klickitat and Pisco rivers, until you arrive at the source of either the Pisco, or, Klickitat, river, which point will terminate the survey."

"Should you find, before arriving at the source of either of these rivers, that the 'divide' has assumed the character of a perfect natural boundary, you will terminate your survey at the point where this description of boundary is attained."

The survey was made under written agreement dated the 9th day of September, 1861, between the said Superintendent of Indian Affairs and Berry & Lodge, whereby the latter undertook to "faithfully survey and mark all the boundaries of the Indian Reservation East of the Cascade Mountains, that are necessary to be surveyed and marked," etc., but the agreement contained the following:

"As the object of making these surveys is especially to establish lines of plain demarkation, it is distinctly understood that when natural boundaries exist to those Reservations, such as Rivers, Ranges of Mountains and so forth, such boundaries shall not be surveyed nor paid for under this contract."

Under the letter of instructions the survey was to be limited to the southern boundary. If any report

of it has been reproduced it has been overlooked, but a map bearing the date 1861 was made of it, a certified copy of which (Plaintiff's Exhibit 4), is in evidence. The map would indicate that an instrumental survey was made and it defines the southern boundary as running from the Yakima river to the Klickitat river. Mount Adams appears with the Klickitat river taking its source directly from it. The map also shows the south fork of the Ahtanum river to be directly north of Mount Adams.

The next reference to the matter appears by letter of R. H. Milroy, Superintendent of Indian Affairs, under date of June 11, 1873, but it only related to an appropriation for boundary and other surveys.

So the matter seems to have stood until October 5, 1889, when W. L. Stabler, then Indian Agent, wrote to the Commissioner of Indian Affairs (letter not in evidence), who in reply addressed a letter to Thomas Priestly, he having in the meantime succeeded Stabler as agent. Priestly under date of December 3, 1889 (Defendants' Exhibit "F"), acknowledged the receipt of the former correspondence and called attention to the fact that the western boundary of the reservation had never been surveyed. Among other things he wrote:

"Indians claim the 'main ridge' extends to the base of Mount Adams on the south and east. While white men with diverse interests claim the 'main ridge' referred to, to be farther east."

For these reasons he recommended a survey of the western boundary. By letter of March 22, 1890 (Defendants' Exhibit G.), Agent Priestly acknowl-

edged receipt of a letter from the Commissioner of Indian Affairs which called attention to the fact that the southern boundary of the reservation had been surveyed for a distance of forty-seven and one-half miles by Harry J. Clark in 1886, and again suggested a survey of the western boundary.

On May 9, 1890, the Acting Commissioner of Indian Affairs addressed a letter to the Secretary of the Interior (Defendants' Exhibit "E"), calling attention to the letter of Agent Stabler of October 5, 1889, and the letter of Agent Priestly of December 3d of the same year, regarding the southern and western boundaries of the reservation, recommending a survey of those boundaries. Without going into intermediate details, and indeed the record does not seem to fully disclose them, it appears that a contract was let to George A. Schwartz on June 20, 1890, for a "resurvey and survey of the south and west boundary of the Yakima Indian Reservation * * *" A letter of instructions from the Surveyor General of the State of Washington upon that date, after reciting the various provisions of the treaty, contained the following:

"From the 47½ mile post, the line to be surveyed extends along the divide separating the waters of the Satass from those flowing into the Columbia, 'to the divide' between the waters of the Klickitat and 'Pisco Rivers; thence along said divide to 'the spur whence flow the waters of said 'rivers; thence up said spur to the main 'ridge of the Cascade Mountains; thence northerly along said ridge, passing south and east of Mount Adams, to the southern tributary of the 'At-

tahnam river,—‘to the established corner of fractional sections 6 and 31, on the south boundary of township 12 north, range 15 east, Willamette Meridian. According to the statement of the Agent in charge of the Yakima Agency, ‘the question as to which is the main ridge of ‘the Cascade Mountains referred to in the treaty is a subject of disagreement, the Indians claiming that the main ridge extends to the base of Mount Adams on the south and east,—white men with diverse interests claiming the said ridge to be further east; ‘also, that no river known as the Pisco, is shown on any map, and that he has found no person, white or Indian, who has knowledge of any river of that name,’ ‘that the river designated as the Topinish on the map of 1887, is the Pisco referred to in the treaty. It is delineated on the diagram, as rising about six miles nearly due east of Mount Adams and a very short distance north of the second Standard Parallel.’ ”

“It is, therefore, advisable, that before you proceed to definitely locate and extend the boundary of the Reservation from the 47½ mile post, you confer with the Agent in charge of the Yakima Agency, and with other white persons, and Indians, familiar with the country, and obtain all the information possible that will tend to a proper location and establishment of this section of the boundary line according to the provisions of the treaty of June 9, 1855.”

Schwartz, under this contract last above mentioned, made his survey in September, October and November of 1890, and duly reported the same to the Surveyor General with a map and field-notes, copies

of which are reproduced in evidence. From that report I extract the following:

"Up to the fifty-first mile corner there is no disagreement whatever regarding the location of the line that I could learn. The line follows the top of a well defined ridge acknowledged to be the true divide by both the whites and Indians with whom I conversed. The line in dispute is from the fifty-first mile 'Onward' in a northerly direction. The Indians claim that the line passes along the top of a low ridge of hills bearing in a southwesterly direction and terminates at the Big Klickitat River and that this should be a continuation of their southern boundary; upon the western end of said ridge there is a round hill called Gray Back Mountain. Thence it is claimed by the Indians the line bears in a northwesterly direction crossing the Klickitat river to the base of Mount Adams."

"From a consultation with Mr. Stabler the United States Indian Agent at Fort Simcoe and from our understanding of the description of this boundary as given in the treaty of June, 1855, U. S. Statutes Vol. Page 961, I adopt this as the intended course and continue the line along top of the divide which bears in a northerly direction between the waters of the Satas and those flowing into the Klickitat river, passing through a country heavily timbered with first class yellow pine, the land is chiefly valuable for its timber and grazing being too dry and the soil too sandy for profitable agriculture."

Subsequently Jacob E. Noel, employed for that purpose under instructions from the Surveyor Gen-

eral of the state, examined the work done by Schwartz, and on August 15, 1891 (Defendants' Exhibit "H"), reported favorably upon it. This survey, accompanied by the report of Noel, was submitted to the Commissioner of the General Land Office, and in a letter of October 21, 1891, to the Surveyor General, we find the following:

"The field-notes of the deputy have been examined and compared with the accompanying plat, from which it appears that the work has been executed in a satisfactory manner, in conformity with the contract and instructions, and I hereby accept the same."

Still later a contract was made with McPherson & Wyche for a survey of the south and west boundary, but from the instructions contained in the letter of the Surveyor General dated March 24, 1896 (Defendants' Exhibit "A"), it would appear that nothing material to the present inquiry was done beyond the re-establishment of certain lines and monuments which had become obliterated or destroyed.

A map was published by the General Land Office in 1891 (Defendants' Exhibit "D"), but it does not seem to conform to the Schwartz survey nor to any other which appears in evidence. But inasmuch as the Schwartz map does not appear to have been tied onto the public surveys, except on the north, while the map issued by the General Land Office does, the latter may possibly have been intended to conform to the line established by Schwartz. However, that may be, the Land Office Map shows the western boundary to be east of the Klickitat river.

In 1898 the matter again became the subject of official inquiry through the interposition of Indian Agent Lynch, and in 1900, E. C. Barnard, then topographer of the geological survey, under direction of the Secretary of the Interior, marked out the boundaries of the reservation as shown on the map in evidence attached to his deposition. (See also Plaintiff's Exhibit No. 1.) In his report he calls attention to conversations had with Stick Joe and Chief Spencer, reservation Indians, and we find the following attributed to the former in relation to the course of a surveying party claimed to have been accompanied by him about the year 1860.

"They then proceeded on the line which follows a well-defined ridge to a peak called Grayback, on the summit of which a marked wooden post set in the ground was found. At this point the surveyor, agent, or officer accompanying the party took out a telescope or some surveying instrument, and sighting toward Mount Adams, pointed out a conical hump on the southeast slope of the same, told the party that the line now went straight to that point."

The description given by Chief Spencer of what it must be assumed was the work of the same party, and the blazing of trees at the junction of the wagon road from Goldendale with the trail from Yakima on the line between Grayback and the hump on the southeast slope of Mount Adams, are also set out with considerable detail.

Barnard's location or description of the boundaries, after having been approved by the Secretary of the Interior, was submitted by him to the Speaker

of the House of Representatives on April 20, 1900, with the recommendation that it be adopted, which was subsequently done by Act of Congress approved December 21, 1904, (33 Stat. L., 596), Section 1 of which act reads as follows:

"That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands embraced in the Yakima Indian Reservation proper, in the state of Washington, set aside and established by treaty with the Yakima Nation of Indians, dated June eighth, eighteen hundred and fifty-five; PROVIDED, That the claim of said Indians to the tract of land adjoining their present reservation on the west, excluded by erroneous boundary survey and containing approximately two hundred and ninety-three thousand eight hundred and thirty-seven acres, according to the findings, after examination, of Mr. E. C. Barnard, topographer of the Geological Survey, approved by the Secretary of the Interior April seventh, nineteen hundred, is hereby recognized, and the said tract shall be regarded as a part of the Yakima Indian Reservation for the purposes of this Act: PROVIDED FURTHER, That where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by bona fide settlers or purchasers under the public land laws, such rights shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit and in the construction of irrigation works on the

Yakima Indian Reservation."

1. Failure to specifically set out the identical ground of complaint is regarded by the defendants as rendering the amended bill insufficient to justify equitable relief.

It is alleged that the patents were issued upon the mistaken belief that the lands were not within the territorial limits of the Indian reservation, and that this grew out of an erroneous and defective survey made before the issuance of the patents, which erroneously represented the lands described as being within the limits of such reservation. The rule is well settled that fraud or mistake must be pleaded with particularity, but no timely objection was made except by demurrer of defendant Wise (never urged), and the defendants do not appear to have been misled. On the contrary, the parties seem to have understood each other and to have directed their energies toward establishing their respective contentions. In this state of the pleadings it must be held that the point is not well made. And this without holding that the complainant's grievance is not well stated.

2. The Schwartz survey, the acceptance of the same by the Land Department and the issuance of patents in reliance upon it, are insisted upon as a binding determination of boundaries, not to be disturbed by judicial review.

Attention has been called to Sections 2155 and 453 of the Revised Statutes which read as follows:

SECTION 2155: "Whenever it becomes necessary to survey any Indian or other reservations or

any lands, the same shall be surveyed under the direction and control of the General Land Office as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed."

SECTION 453 in part reads: "The Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all the executive duties appertaining to the survey and sale of the public lands of the United States or in anywise respecting such public lands, and also, such as relate to private claims of land and issuing of patents for all grants of land under the authority of the Government."

It is urged that these statutes, particularly section 2155, conferred exclusive jurisdiction upon the Land Department to cause a survey of the reservation to be made, and that when made and approved it concluded the parties in interest.

What weight ought to be given this survey is not entirely clear. The rule invoked to sustain it might, if carried to its logical sequence, bring defeat to the contention, because the Berry & Lodge survey, made even before the railroad grant, established the southern boundary as far as the Klickitat river, which is a point far beyond the western boundary as established by Schwartz. Again, whether the language used by the Commissioner of the General Land Office in acknowledging receipt of the map and field-notes from the Surveyor General was intended as an approval is not altogether free from doubt. That there was acquiescence such as contended for, either

by the Department or the Indians themselves, is not established. As to the latter, the documents in evidence disclose an unvarying contention for the main ridge whenever the question arose, and this is supplemented by declarations disclosed by the evidence, while as to the Department, the oft-repeated attempts at locating boundaries in apparent disregard of former efforts, is enough to put the matter in a state of uncertainty. As to the Departmental attitude, it would seem that it was never considered finally settled in view of the final demarkation of boundaries made by Barnard under the direction of the Secretary of the Interior and not then until the boundaries established by him were confirmed by Congress. But in the discussion which follows it will be assumed that the Railroad Company, desiring to know whether certain lands fell within the grant, made application for a survey to determine that question; that the Schwartz survey resulted, and that, under all the circumstances, while not expressly approved in terms, it was intended by the Department to be and was acted upon as establishing the western boundary of the reservation. In this view there is much force in the claim, so well presented, that the action of the executive branch charged with the duty and clothed with the power of making surveys, ought to set the matter forever at rest. There are many expressions in the decisions of the Supreme Court which, unless carefully distinguished and read in connection with the context, give color to this contention. For instance, in *Russell vs. Maxwell Land Grant Co.*, 158 U. S. 258,

we find the following:

"There must be some tribunal to which final jurisdiction is given in respect to the matter of surveys, and no other tribunal is so competent to deal with the matter as the Land Department. None other is named in the statutes."

But the case was between private individuals, and the language quoted was preceded by the following:

"And in the nature of things a survey made by the government must be held conclusive against any collateral attack in controversies between individuals."

Again, it was said:

"If, in every controversy between neighbors, the accuracy of a survey made by the government were open to question interminable confusion would ensue."

In *Tameling vs. United States Freehold Company*, 93 U. S. 644, it was held, as it was inevitable that it would be, that the action of Congress confirming a private land claim is conclusive upon the courts. But principles were discussed and afterwards noticed by the Supreme Court in *Maxwell Land Grant Case*, 121 U. S. 325, 366, which were regarded as having application to the case then at bar. It was pointed out that in the *Tameling* case the attack was collateral, not involving a controversy between the United States and an individual, while in the *Maxwell* case, being a suit brought by the United States, the attack was said to be direct. This is better illustrated by the following excerpt:

"This case of *Tameling*, while it cannot be said to be conclusive of the one now before us, for the rea-

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n that that was an action in ejectment founded upon a title confirmed by an Act of Congress, in which the title could not be collaterally assailed for fraud or mistake, and the present is a suit attacking the patent and the survey upon which it issued directly by a bill in chancery to set them aside for such fraud and mistake, still the opinion announces principles which, as applicable to this case and as regards the question of the extent of the grant, it would seem should govern it."

The power to consider the correctness of the survey in the Taneling case was denied, because upon the report of the Surveyor General of New Mexico Congress had confirmed the the title as surveyed. But the probative force and effect of a survey duly made in pursuance of law, was regarded as carrying with it the presumption of correctness, and it was this principle, laid down in the former case, that the Court held applicable even where the attack is direct. For the Court did consider in the Maxwell Land Grant Case, *supra*, the correctness of the survey, but concluded that, to use its own language, "there is an utter failure to establish either mistake or fraud."

This distinction was clearly pointed out again in *Magin vs. Powell*, 128 U. S. 691, 696, as follows:

"That the power to make and correct surveys of the public lands belongs to the political department of the government, and that, whilst the lands are subject to the supervision of the General Land Office, the decisions of that bureau in all such cases, are that of other special tribunals upon matters within their exclusive jurisdiction, are unassailable

by the courts, *except by a direct proceeding*; and that the latter have no concurrent or original power to make similar corrections, if not an elementary principle of our land law, is settled by such a mass of decisions of this court that its mere statement is sufficient."

The purpose of this suit, directly waged, as in the Maxwell Land Grant Case, *supra*, is to set aside the patents which were issued in conformity with the survey. It is true it incidentally involves the correctness of the survey itself, but no other matter of inquiry could be devised, complainant being unable to proceed against itself. The attack upon the patents is as direct as the nature of the case will permit. Between individuals, who would question the validity of the survey, it would, of course, be collateral; as between the government and the patentee it is direct. That it is competent for the United States to invoke the aid of equity to cancel a patent issued through fraud or mistake, as any other suitor might do, is well settled, and we have seen that the rule applies even where the survey might otherwise be held conclusive, if in fact it be erroneous. But a survey is not to be held lightly; it imports verity; it is presumptively correct.

To overturn this presumption the evidence must be "clear, unequivocal and convincing."

Maxwell Land Grant Case, *supra*.

The facts must be established by evidence "entirely satisfactory to the Court."

United States vs. Throckmorton, 98 U. S. 61.

Having found, then, that this is a direct proceed-

ing; that in such a proceeding it is competent to afford relief as against an erroneous survey, but only upon the most clear and convincing proof, we proceed to examine the testimony to ascertain whether a mistake was actually made, and if so, it is established to that degree of certainty which warrants equitable interposition against the solemn act of the Government authorized to convey the public lands in accordance with existing laws.

The difficulty in correctly locating the boundaries of the reservation arises from a want of conformity of the description contained in the treaty with the topography of the country. The southern boundary of the Ahtanum river does not reach the main ridge of the Cascade Mountains. The language, "thence along the southern tributary to the Cascade Mountains" might justify the contention made in support of the Schwartz survey if it was not followed by the words "thence southerly along the main ridge of said mountains passing south and east of Mount Adams to the spur whence flows the waters of the Klickitat and Pisco rivers," for it is true that the southern tributary does reach a spur of the Cascade Mountains, and in that respect, perhaps, it may be said that it reaches those mountains, although the spur is rally known as the Satass range or Simcoe mountain. But stopping with the source of the southern ributary of the Ahtanum river and from thence upon the spur followed by Schwartz, defeats the description which defines the line as running southerly along the main ridge. The line could not pass southely along that ridge unless it should first

be reached; besides the description can be harmonized by concluding that it was meant by "to the Cascade Mountains," to designate the main ridge. The conformation of the country is shown by a quadrangle published by the Geological Survey (Plaintiff's Exhibit 2), as well as by other evidence in the case, and personal familiarity with the country enables me to better understand the situation, although I have attempted to draw my conclusions strictly from the evidence. The Klickitat river, as at present known, is east of Mount Adams, while the White Salmon is west of that mountain. There is a ridge, which Schwartz followed, of considerable altitude varying from 5,500 feet to 3,500 feet above sea level, and this ridge does actually divide the waters of the Klickitat and Pisco Rivers, the latter of which is now known as the Toppenish. It is necessary to cross the Klickitat river in order to reach the main ridge of the mountains at all. These facts Mr. Schwartz deemed conclusive. But a reference to the original Stevens map shows that the Klickitat river is there described as being west of Mount Adams. This map also clearly locates the western boundary on the main ridge of the mountains and the southern boundary as crossing south and east of Mount Adams according to the treaty requirements. Mount Adams and Mount Rainier are both prominently shown upon the map with the boundary a considerable distance west of a line drawn from one to the other. That the western boundary as thus shown does extend to the main ridge, is not in dispute. A fair explanation of the confused situation

is, that it was supposed by the person who framed the treaty that the south fork of the Ahtanum, as the map indicates, took its rise from the main ridge and that the Pisco river took its rise from the spur leading down from Mount Adams. This is made clear by the designation of the river flowing west of Mount Adams as the Klickitat. There is a spur east of the river so designated that leads down from Mount Adams toward the divide which separate the waters of the Satass river from those flowing into the Columbia. It was assumed, apparently, that this ridge divided the waters of the Klickitat from those of the Pisco. This ridge or spur is not, however, continuous; a great canyon is to be crossed. But the Stevens map indicates that the intention was to cross it, and there is no way to reach the ridge between the headwaters of the Satass and of those flowing into the Columbia river from the main ridge of the Cascade Mountains without crossing this canyon; nor to reach the main ridge from the head of the Ahtanum river without crossing the Klickitat. Assuming that the river designated on the map by General Stevens as the Klickitat was not at the time known by that name (and it is certain that it is not now so known), yet the Indians would understand the main ridge of the mountains as such distinctive landmarks as Adams and Rainier, and if the map was exhibited to them at the time of making the treaty or afterwards, and they saw that the boundaries extended to the main ridge of the mountains, they would accept it as correctly outlining the reservation when they would not be able to read descriptive

words. The description is imperfect from any standpoint. In order to work out the intention of the parties it is necessary to draw inferences and supply missing links from the topographic surroundings and by reference to natural landmarks and those objects which are definite. To adopt the Schwartz survey would be to disregard that which to my mind is altogether controlling. That is, the line following down the main ridge of the Cascades; and all the witnesses, including Schwartz, say that his line does not follow that ridge. This conclusion involves nothing beyond the application of the familiar rule that courses and distances must give way to monuments.

But there are other reasons which fortify this view. The survey made by Berry & Lodge in 1861 established the line as far as the Klickitat river, which is a point far west of the Schwartz line. This was at a time when recollection was fresh and information obtainable.

Barnard made his first recognizance in the fall of 1898 and completed it in 1899, but his report did not reach the Department until early in 1900. Most of the old Indians who would have known about the lines were then dead, but he mentions information obtained from Stick Joe to the effect that about 1860 this Yakima Indian accompanied a party of officers along a portion of the southern boundary. They left the military road at mile-post twenty-nine and followed a well-defined ridge to Grayback peak, finding a marked wooden post set in the ground. At this point the surveyor or officer took out a telescope,

or some surveying instrument, and sighting towards Mount Adams pointed out a conical hump on its southeast slope saying to the party that the line went straight to that point. It is to be borne in mind that the twenty-nine mile-post was a designation of the military road and not of the boundary. The fact that it marked both was a coincidence only. The wooden post at the foot of Grayback, however, was not found by Barnard.

Chief Spencer related how the year after the treaty three men came and took him to the outlet of the Camas Prairie and there a tree was blazed and they found a pile of stones which he was informed constituted a monument in the boundary line. This was at the junction of the Indian Trail and the Goldendale road. This location was in pursuance of what Governor Stevens had told him the year before would be done. Townsend, the Indian Agent, was one of the men. He said these men pointed two ways from that corner, one to the foot of Mount Adams and the other to Grayback peak. Other boundary lines pointed out to him at the time he speaks of with some minuteness of detail. The Chief kept this rock pile renewed and built up for many years. But assuming, as it has been contended, that the statements of the Indian Agent ought to be received with caution in that they come from parties directly in interest, an examination shows that they are corroborated by indisputable evidence. Chief Spencer gave the names of persons who were officers contemporary with the time of which he speaks. This, of course, it might be possi-

ble for an Indian to do, but it is not probable that he would know the names of those officers unless he had come in contact with them as related by him. Barnard testified that going eastward from Grayback peak they came to the twenty-nine mile-post claimed by the Indians as marking a point on the true boundary line, and within one hundred feet of this point he found a forked pine tree of unusual shape which the Indians had described as a boundary monument. Running east up the ridge toward the fifty-one mile-post he found a line of blazes forty years old. At the point where the old Indian trail from Fort Simcoe joins the Goldendale road, pointed out by Chief Spencer as the place where the agents of the Government had blazed trees in 1858 or 1859, were found two large bull pines which showed indications of old blazes and upon cutting out one of them and estimating the subsequent growth by the rings it was found that the blaze had been made forty years before. From Grayback peak the conical hump on the southeast slope of Mount Adams was plainly visible, which is slightly corroborative of what Stick Joe said concerning the conversation with the officers, already related. From Grayback peak this line extends east along a well-defined ridge to the fifty-one mile-post. Near the twenty-nine mile-post was found what Barnard describes as a very plain blaze. It was circular, and in the upper left-hand corner was the letter "S" with a line drawn below it and a figure "16" below. Just opposite the figure "16" and to the right, was an ellipse, from the axis horizontal. Below this and further to

the right were the figures "1886" with the letter "R" below. At the extreme base of the blaze were the figures "1869." Above "1886" was the letter "I" above the "R," from which Barnard concluded that the letters "IR" were intended to indicate "Indian Reservation." That Clark re-established lines and monuments on the southern boundary in 1886 is at once suggested by what Barnard found at this point. The witness Olney described the line between Grayback peak and fifty-one mile-post as "a streak of blazes," old and new, while Abe Lincoln, though not so specific, in part corroborated the other witnesses as to boundaries and monuments. The evidence of an early demarkation of the southern boundary, extending far west of the Schwartz line, seem to have been ignored when that line was established. No other conclusion can be reached but that the Indians, whenever the question arose, always claimed the main ridge as forming the western boundary. Thus delimited the reserve includes the hunting ground and berry patches upon which at the time of the treaty they naturally laid great store and which they have utilized ever since. The fact that the treaty carried with it the privilege of hunting, gathering roots and berries and pasturing horses and cattle upon open and unclaimed lands, does not outweigh the deduction which may legitimately be drawn from the claim that these extensive hunting grounds and berry patches were purposely embraced within the reserve. No act or admission of the Yakima Nation of Indians, of any of the tribes belonging to it, or of any individual member is shown,

from which the conclusion can be reached that the Indians ever conceded the Schwartz line, or admitted anything short of a line running to the main ridge of the mountains.

Against these evidences we have the testimony of a Mr. Parrott, now fifty-five years old, who speaks from remembrance of a conversation heard when he was seven years of age in which Father Wilbur, at that time not even Indian Agent, pointed out a mark or monument on the Goldendale road which he designated as the boundary of the reservation. This is slightly supplemented by testimony of a more or less uncertain nature concerning common repute, given by some of the defendants. Father Wilbur was, of course, not authorized to bind the Indians although his opinion would be entitled to great weight; but the evidence is of too uncertain a character to overcome positive proof, the circumstances, the prominent landmarks, the language of the treaty, and the understanding of the Indians.

The rule that courts will construe a treaty with Indians as they understood it and as justice and reason demand, was reasserted in *United States vs. Winans*, 198 U. S. 371. Aided by this rule and even without its aid, the evidence in its probative and convincing effect to my mind brings the case within the rule laid down by the Supreme Court; and my conclusion is that Schwartz was not justified, from the language of the treaty or otherwise, in establishing the line of 1890, but that he made a palpable mistake in doing so.

The defendants have interposed the statute of

limitations and have invoked the rule applicable to purchasers without notice. These will be considered together. According to the view I take they must stand or fall together. If the officers of the Land Department had the power to issue the patents, that is, if the issuance of them involved nothing beyond a determination of those matters which ordinarily arise in the execution of the public land laws, including surveys and the settlement of boundaries, the suit, I should say, as to all patents issued six years prior to the time it was begun, is barred by section 8 of the Act of March 3, 1891 (26 Stat. L., 1093, 1099).

And it would also seem that the general rule applicable to innocent purchasers laid down in *United States vs. Clark*, 200 U. S. 601, *United States vs. Detroit Timber & Lumber Co.*, 200 U. S. 321, and many other cases which might be cited, may avail the defendants if the officers of the Land Department were acting within the scope of powers conferred upon them.

This treaty has been several times construed. In *United States vs. Taylor*, 3 Wash. Ty. 88, it was held that the right "of taking fish at all usual and accustomed places in common with the citizens of the territory, and of erecting temporary buildings for curing them," guaranteed by the treaty, was not cut off by the subsequent issuance of a patent, absolute in form, embracing the land where the Indians had theretofore been accustomed to take fish.

So Judge Hanford held, except as to the right to erect buildings after patent, in *United States vs.*

Winans, 73 Fed. 72. This case was afterwards reviewed by the Supreme Court, 198 U. S. *supra*. In commenting upon conditions arising after the treaty, that Court said:

"Only a limitation of them, however, was necessary and intended, not a taking away. In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted."

Again, speaking of the nature of the right there being considered, we find the following:

"And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees."

In discussing the effect of an absolute patent including lands upon which the right of fishery had been exercised the Court observed:

"The construction of the treaty disposes of certain subsidiary contentions of respondents. The Land Department could grant no exemptions from its provisions. It makes no difference, therefore, that the patents issued by the Department are absolute in form. They are subject to the treaty as to the other laws of the land."

The rule certainly ought to be as broad when applied to the reservation itself as to the servitude upon lands expressly ceded by the treaty. The fee, it is true, is in the United States with the right of occupancy only in the Indians. This is an interest in the land. It is often referred to as the Indian title and it was this interest that the United States undertook to extinguish where lands should fall

within the limits of the grant; but until its extinguishment it is beyond the power of the executive branch to divest the title. Thus, in *Leavenworth vs. United States*, 92 U. S. 733, the court was considering a case involving the same contention made here. That case contains the following:

"As long ago as *The Cherokee Nation vs. Georgia*, 5 Pet. 1, this Court said that the Indians are acknowledged to have the unquestionable right to the lands they occupy, until it shall be extinguished by a voluntary cession to the Government; and, recently, in *United States v. Cook*, 19 Wall. 591, that right was declared to be as sacred as the title of the United States to the fee."

Again: "Only the public lands owned absolutely by the United States are subject to survey and division into sections and to these lands this grant is applicable. It embraces such as could be sold and enjoyed and not those which the Indians, pursuant to treaty stipulations, were left free to occupy."

Adverting to the contention that money had been raised upon the belief that title was in the railroad company, it was said:

"This is a subject of regret, as is always the case when a title, on the strength of which money has been advanced, fails. It is to be hoped that the security taken upon the other property of the company will prove sufficient to satisfy the claims of the holders of its bonds. But whether this be so or not, we need hardly say that the title to lands is not strengthened by giving a mortgage upon them; nor can the fact that it has been given throw any light

upon the prior estate of the mortgagor."

In the Maxwell Land Grant Case, *supra*, it was said:

"If the Mexican government had no power to grant anything beyond twenty-two square leagues in either case, the excess of the grant beyond that was void."

The same rule was followed in the United States vs. Mullan, 118 U. S. 271, where it was held that patents for lands listed without authority to the State of California and by it patented to purchasers in reliance upon such lists, should be canceled. The Court said:

"The list was certified without authority of law, and, therefore, by a mistake against which relief in equity may be afforded."

Continuing the Court quoted approvingly from United States vs. Stone, 2 Wall. 525, 535, as follows:

"The patent is but evidence of a grant, and the officer who issues it acts ministerially and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority. But one officer of the land office is not competent to cancel or annul the act of his predecessor. That is a judicial act, and requires the judgment of a Court."

That the United States may and should proceed to seek the cancellation of a patent issued without authority of law has often been held.

Hughes vs. United States, 4 Wallace, 232.

United States vs. Mo. K. & T. Ry. Co., 141 U. S.

Burfenning vs Chicago etc. Ry. Co., 163 U. S. 321.

The Indian title not having been extinguished, in view of the foregoing decisions, it must be held that the Land Department was without authority; its act was a nullity; it did not bind the Indians who were in the meantime in possession holding under the treaty. If they could be estopped at all in view of their condition as wards of the Government, it is clearly established that they have contended for boundaries substantially as defined by the Barnard survey. Their affirmative claim goes back as far as 1860 and continues from thence forward. Up to 1882 there had apparently been no occasion to contend about that which they were peaceably enjoying. That the United States may bring a suit for the protection of the rights of the Indians is well settled.

United States vs. Rickert, 188 U. S. 432.

It must be concluded that the statute of limitations was only intended to apply to such suits as the United States might bring in its own behalf to set aside patents issued through mistake or in fraud of its own rights and not to those cases where it acts on behalf of the Indians as its wards. The limitations statute itself is an amendment to the Act of March 3, 1891, entitled, "An Act to repeal timber culture and for other purposes," and the latter Act had reference to the disposal of public lands of the United States. That it was intended to conclude the Indians from asserting their own title or the United States as their guardian from attempting to

declare void that which was done without authority of its officers by placing a limitation upon the time within which a suit should be brought, I cannot believe. And unless the force and effect of the decisions of the Supreme Court have been misapprehended the Indians could not be deprived of their right of occupancy, at least in the absence of an act of Congress. It is true that the Barnard survey as to the northern boundary is subject to the objection that certain lines were arbitrarily fixed. But in so far as I have been able to discover by reference to the exhibits, those boundaries which the treaty clearly justifies embrace all of the lands in controversy except the following, which the witness Barnard was not able to say were within such boundaries:

Northeast Quarter of Southeast Quarter, South Half of Southeast Quarter, Section 11, Township 7, North of Range 12, East.

Lots 1, 2, 3, 4, Section 19, Township 7, North of Range 13 East.

All lots described in Sections 1 and 11, Township 6, North of Range 13 East.

All of Section 13, Township 6, North of Range 13, East.

Whether the confirmation of title by Congress in the railroad companies and those claiming under them would have been sufficient to pass the title it is unnecessary to discuss. The act relied upon only undertook to make valid such rights as had been acquired "by *bona fide* settlers or purchasers under the public land laws." The language is not broad

enough to include lands claimed under the granting act to the railroad company.

It follows that the complainant must prevail except as to the lands above described, and a decree will go accordingly.

[Endorsements]: Opinion. Filed in the U. S. Circuit Court for the Eastern District of Washington, January 7th, 1910. Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,
Defendants.

Decree.

This cause came on to be heard on the 25th day of September, A. D. 1909, and was then argued by counsel for the respective parties, the Court having read the briefs of the respective parties theretofore

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filed herein, and said cause having been taken under advisement until this day; and thereupon, upon consideration thereof, the counsel for the respective parties being present in open court, it was and is ORDERED, ADJUDGED and DECREED as follows, viz.:

That those certain patents (being described in the bill of complaint herein), issued to the defendant Northern Pacific Railway Company, a corporation, by the complainant, the United States of America, on or about, respectively:

January 4, 1904, covering and purporting to convey the North half of the Northeast quarter, the Southeast quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter, the South half of the Southeast quarter of Section Eleven (11), Township Seven (7) North, of Range Twelve (12) East of the Willamette Meridian; EXCEPT the Southwest quarter of the Southeast quarter and Lot Eight (8) of said Section Eleven (11), Township Seven (7) North, of Range Twelve (12) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the Southwest quarter of the Northeast quarter of Section One (1) Township Seven (7) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the Northeast quarter of the Northeast quarter of Section Nineteen (19), Township Seven (7) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey Lots One (1), Two (2), Three (3) and Four (4), the West half of the Southwest quarter, and the East half of the Southeast quarter of Section Five (5), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

March 5, 1901, covering and purporting to convey all of Section Thirteen (13), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey all of Section Fifteen (15), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey Lots Three (3), Four (4), Nine (9) and Ten (10) of Section Nineteen (19), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey Lots Three (3), Four (4), Nine (9) and Ten (10) of Section Thirty-one (31), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the West half of the Northwest quarter, and the West half of the Southwest quarter of Section Thirty-three (33), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey Lot Two (2) and the Southeast quarter of the

Northwest quarter of Section Seven (7), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the Northeast quarter of the Northeast quarter, the Southwest quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter, the Southeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section Nineteen (19), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the Northwest quarter of the Northwest quarter of Section Twenty-nine (29), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey Lots Three (3) and Four (4), the Northeast quarter of the Southwest quarter and the North half of the Southeast quarter of Section Thirty-one (31), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the South half of the Northwest quarter and the Southwest quarter of Section Thirty-three (33), Township Nine (9) North, of Range Thirteen (13) East of Willamette Meridian;

January 4, 1904, covering and purporting to convey the Northwest quarter of the Northeast quarter, and the Northwest quarter of the Southwest quarter of Section Twenty-one (21), Township Seven (7)

North, of Range Fourteen (14) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the North half of the Southwest quarter of Section Twenty-nine (29), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the Southeast quarter of the Southwest quarter of Section Thirty-one (31), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

January 4, 1904, covering and purporting to convey the South half of the Northeast quarter, the Southeast quarter of the Southwest quarter, and the Southeast quarter of the Southeast quarter of Section Thirty-five (35), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

ALSO

Those certain patents (being described in the bill of Complaint herein) issued to the defendant Northern Pacific Railroad Company, a corporation, by the complainant, the United States of America, on or about, respectively:

May 10, 1895, covering and purporting to convey all of Section One (1), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

May 10, 1895, covering and purporting to convey the Northeast quarter, the North half of the Northwest quarter and the Southeast quarter of Section

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Twenty-five (25), Township Eight (8) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey Lots One (1) and Two (2) and the South half of the Northeast quarter of Section One (1), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey Lots Three (3) and Four (4) and the South half of the Northwest quarter of Section One (1), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the Southeast quarter of Section One (1), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the Southwest quarter of Section One (1), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey Lots One (1) and Two (2) and the South half of the Northeast quarter of Section Three (3), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey Lots Three (3) and Four (4) and the South half of the Northwest quarter of Section Three (3), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to con-

vey the Southeast quarter of Section Three (3), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the Southwest quarter of Section Three (3), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey Lots One (1) and Two (2) and the South half of the Northeast quarter of Section Five (5), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey Lots Three (3) and Four (4) and the South half of the Northwest quarter of Section Five (5), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the Southeast quarter of Section Five (5), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the Southwest quarter of Section Five (5), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey Lot One (1) and the Northeast quarter of the Northwest quarter of Section Seven (7), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Nine (9), Township Nine (9)

North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Eleven (11), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Thirteen (13), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Fifteen (15), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the Northeast quarter, the East half of the Northwest quarter, the East half of the Southwest quarter and the Southeast quarter of Section Seventeen (17), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Twenty-one (21), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Twenty-three (23), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Twenty-five (25), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Twenty-seven (27), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the North half of the Northeast quarter of Section Twenty-nine (29), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey the Northeast quarter, the North half of the Northwest quarter and the Southeast quarter of Section Thirty-three (33), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Thirty-five (35), Township Nine (9) North, of Range Thirteen (13) East of the Willamette Meridian;

May 10, 1895, covering and purporting to convey all of Section One (1), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

May 10, 1895, covering and purporting to convey the South half of the Northeast quarter, the South half of the Northwest quarter, the North half of the Southwest quarter, Lots One (1), Two (2), Three (3) and Four (4), Southeast quarter of Southwest quarter and Southeast quarter of Section Five (5), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

May 10, 1895, covering and purporting to convey

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all of Section Nine (9), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

May 10, 1895, covering and purporting to convey all of Section Thirteen (13), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

May 10, 1895, covering and purporting to convey the Northeast quarter of the Northeast quarter of Section Twenty-one (21), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

May 10, 1895, covering and purporting to convey all of Section Twenty-five (25), Township Seven (7) North, of Range Fourteen (14) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section One (1), Township Six (6) North, of Range Fifteen (15) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Five (5), in Township Six (6) North, of Range Fifteen (15) East of the Willamette Meridian;

January 6, 1896, covering and purporting to convey all of Section Nine (9), Township Six (6) North, of Range Fifteen (15) East of the Willamette Meridian;

ALSO,

Those certain deeds or contracts, whereby the defendant Northern Pacific Railway Company, a corporation, attempts or agrees to convey

To defendants Badley, all of Section Five (5), Township Six (6) North, of Range Fifteen (15) East of the Willamette Meridian;

To defendants Wise and McCully, all of Section Nine (9), Township Six (6) North, of Range Fifteen (15) East of the Willamette Meridian;

To defendants Yeackel, all of Section One (1), Township Six (6) North, of Range Fifteen (15) East of the Willamette Meridian;

ALSO,

That certain mortgage made and executed by Northern Pacific Railroad Company, a corporation, to defendant, The Mercantile Trust Company, a corporation, on or about the 10th day of November, 1896, wherein said Northern Pacific Railway Company purports to mortgage to said Mercantile Trust Company the lands, real estate and premises hereinbefore described (and other lands, real estate and premises), to secure the payment of certain moneys from said Northern Pacific Railway Company in accordance with the terms of said mortgage,—

Are, and each of said above described patents, deeds, contracts and mortgage is, void and of no force or effect, and they are, and each of them is, canceled, set aside and held for naught, and the cloud on complainant's title to said lands, real estate and premises occasioned thereby is hereby cleared and removed; and it is further

ORDERED, ADJUDGED and DECREED that none of said defendants, nor any person or corporation acquiring any right, title or interest in and to said lands subsequent to the filing of the *lis pendens*

herein, to wit: January 11, 1907, has any right, title, interest or estate in said lands, real estate and premises, nor in any part or parcel thereof, and that the complainant, the United States of America, is the owner of, and entitled to the possession of, said lands, real estate and premises, and each and every part and parcel thereof (the same being situate in Yakima County, Washington), subject to the rights, interests and estate of the confederated tribes and bands of Indians under the name of Yakima, under and by virtue of that certain treaty between said Indians and the United States entered into on or about the 9th day of June, 1855 (12 Stat. L., 951), ratified March 8, 1859, and proclaimed April 18th, 1859.

That the complainant do have and recover from the defendants its costs and disbursements herein incurred.

Done in open court this 28th day of June, A. D. 1910.

(Signed) EDWARD WHITSON,
Judge.

To the foregoing decree the defendants except, and an exception is allowed.

(Signed) EDWARD WHITSON,
Judge.

[Endorsements]: Decree. Filed in the U. S. Circuit Court for the Eastern District of Washington, June 28th, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY

(a Corporation), et al.,

Defendants.

Order [Staying Proceedings].

Upon motion of attorneys for defendants for an order staying all further proceedings herein for ninety (90) days from and after the filing of the decree herein, to wit: Ninety (90) days from June 28th, 1910, for the purpose of perfecting its appeal herein and good cause appearing therefor, and the Court being fully advised in the premises;

It is hereby ORDERED that all further proceedings herein be, and the same are, hereby stayed for ninety (90) days from the 28th day of June, 1910.

Done in open court this 28th day of June, 1910.

(Signed) EDWARD WHITSON,

Judge.

[Endorsements]: Order Staying Proceedings for Ninety Days. Filed in the U. S. Circuit Court for the Eastern District of Washington, July 1st, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,
Defendants.

Petition for Appeal.

The above-named defendants, Northern Pacific Railway Company, The Mercantile Trust Company, Henry Yeackel, Flora Yeackel, Wilbur S. Badley, Florence C. Badley, C. D. Wise, ——— Wise, and R. D. McCully, conceiving themselves aggrieved by the final decree, order and judgment entered in the above-entitled cause June 28th, 1910, hereby appeal therefrom and from the whole thereof. They pray that this, their appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be allowed, and that a transcript of the record, proceedings and papers upon which said final decree, order

and judgment was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit.

And now at the time of the filing of this petition for appeal, the said defendants file an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray.

(Signed) NORTHERN PACIFIC RAILWAY
COMPANY,

THE MERCANTILE TRUST COM-
PANY,

HENRY YEACKEL,

FLORA YEACHEL,

WILBUR S. BADLEY,

FLORENCE C. BADLEY,

C. D. WISE,

—— WISE,

R. D. McCULLY.

By C. W. BUNN,
CHARLES DONNELLY,
EDWARD J. CANNON,

Their Solicitors.

[Endorsements]: Petition for Appeal. Filed in the U. S. Circuit Court for the Eastern District of Washington, August 20th, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,

Defendants.

Assignment of Errors.

Come now the defendants in the above-entitled case, except defendants John J. Zehner and Katie Zehner, his wife, and say that in the decree herein made and entered on the 28th day of June, 1910, there is manifest error, and file the following assignment of errors committed and happening in the said cause upon which they will rely in their appeal from said decree:

1. The Court erred in holding that the Schwartz survey, the acceptance of the same by the land department, and the issuance of patents in reliance

thereon, were not a binding determination of the boundaries of the reservation which cannot be disturbed.

2. The Court erred in holding that sections 2155 and 453 of the Revised Statutes of the United States, and particularly section 2155, did not confer jurisdiction upon the land department to cause the survey of the reservation to be made.

3. The Court erred in holding that when said survey was made by Schwartz and approved, that it did not conclude the parties in interest.

4. The Court erred in holding that the evidence introduced by complainant established the fact that Schwartz was not justified from the language of the treaty and made a mistake in establishing the lines and making the survey of 1890.

5. The Court erred in holding that the evidence offered by complainant in support of the contention that the Schwartz survey was erroneous was sufficiently clear and convincing to justify the relief granted.

6. The Court erred in holding that it had jurisdiction to afford relief as against an erroneous survey.

7. The Court erred in holding that the survey made by E. C. Barnard in 1900 correctly marked out the boundaries of the reservation and that said survey established the fact that the Schwartz survey was erroneous.

8. The Court erred in holding that this action is not barred by the Statute of Limitations.

9. The Court erred in not holding that the

Schwartz survey made in 1890 correctly established the boundaries of the reservation.

10. The Court erred in adjudging and decreeing that those certain patents described and set forth in the decree herein, or any of them, are void and of no force or effect, and they, or any of them, should be cancelled, set aside, and held for naught.

11. The Court erred in adjudging and decreeing that the Northern Pacific Railway Company was not a *bona fide* purchaser of the lands involved in this suit.

12. The Court erred in adjudging and decreeing that The Mercantile Trust Company, as mortgagee of the Northern Pacific Railway Company, was not a *bona fide* purchaser of the lands involved in this suit.

13. The Court erred in decreeing that the other appellants were not *bona fide* purchasers of the lands severally claimed by them.

(Signed) C. W. BUNN,

(Signed) CHARLES DONNELLY,

(Signed) EDWARD J. CANNON,

Solicitors for Defendants.

[Endorsements]: Assignment of Errors. Filed in the U. S. Circuit Court for the Eastern District of Washington, August 20th, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,

Defendants.

Order Allowing Appeal, etc.

On this 20th day of August, 1910, being a day of the same term of court in which the final decree in the above-entitled cause was entered, came the above-named defendants, except the defendants John J. Zehner and Katie Zehner, his wife, by Edward J. Cannon, their solicitor, and in open court moved the Court to be allowed an appeal from the decree of this Court herein rendered and entered on the 28th day of June, 1910, in favor of the complainant and against the said defendants, to the United States Circuit Court of Appeals for the Ninth Circuit, and filed the defendants' assignment of errors.

552 *The Northern Pacific Railway Co. et al.*

On the filing of said assignment of errors by said defendants, the court does hereby allow said appeal and orders that a certified copy of the record, proceedings and papers upon which said decree appealed from was based or rendered, duly authenticated, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 20th day of August, 1910.

By the Court,

(Signed) EDWARD WHITSON,
Judge.

[Endorsements]: Order Allowing Appeal. Filed in the U. S. Circuit Court for the Eastern District of Washington, August 20th, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,
Defendants.

Order Fixing Amount of Bond on Appeal.

In this cause on motion of solicitors for the defendants above named, and pursuant to stipulation of solicitors on file herein,—

It is ORDERED that the bond of said defendants, except defendants John J. Zehner and Katie Zehner, his wife, be, and the same hereby is, fixed at the sum of Fifty Thousand (\$50,000.00) Dollars, and that the same, when filed, shall be effective as a bond for costs on said appeal and as a supersedeas bond as well.

Done in open court this 20th day of August, 1910.

(Signed) EDWARD WHITSON,

Judge.

[Endorsements]: Order Fixing Amount of Appeal Bond. Filed in the U. S. Circuit Court for the Eastern District of Washington, August 20th, 1910. Frank C. Nash, Clerk.

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Division.*

No. 1260.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-

554 *The Northern Pacific Railway Co. et al.*

LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,

Defendants.

Bond on Appeal.

Know All Men by These Presents: That we, the Northern Pacific Railway Company, a corporation, The Mercantile Trust Company, a corporation, Henry Yeackel and Flora Yeackel, his wife, Wilbur S. Badley and Florence C. Badley, his wife, C. D. Wise and ——— Wise, his wife, and R. D. McCully, as principals, and the National Surety Company, a corporation, as surety, are held and firmly bound unto The United States of America in the sum of Fifty Thousand (\$50,000.00) Dollars, to be paid to said The United States of America, for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 19th day of August, 1910.

Whereas, the above-named defendants and appellants have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered against them in the above-entitled cause in the Circuit Court of the United States for the Eastern District of Washington, Eastern Division, on the 28th day of June, 1910; and

Whereas, the said defendants and appellants are

desirous of superseding and staying execution of said decree,

Now, therefore, the condition of this obligation is such that if the above-named appellants, Northern Pacific Railway Company, The Mercantile Trust Company, Henry Yeackel and Flora Yeackel, his wife, Wilbur S. Badley and Florence C. Badley, his wife, C. D. Wise and —— Wise, his wife, and R. D. McCully, shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

(Signed) NORTHERN PACIFIC RAILWAY
COMPANY,

THE MERCANTILE TRUST COM-
PANY,

HENRY YEACKEL and
FLORA YEACKEL,

His Wife,

WILBUR S. BADLEY and
FLORENCE C. BADLEY,

His Wife,

C. D. WISE and

—— WISE,

His Wife,

R. D. McCULLY,

By C. W. BUNN,

CHARLES DONNELLY,

EDWARD J. CANNON,

Their Solicitors.

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(Signed) NATIONAL SURETY COMPANY,
By HUGO E. OSWALD,
Resident Vice-president.
By S. A. MITCHELL,
Resident Assistant Secretary.

[Seal of Corporation Surety Company]

State of Washington,
County of Spokane,—ss.

On this 19th day of August, 1910, before me personally appeared S. A. Mitchell, Resident Assistant Secretary of the National Surety Company, and with whom I am personally acquainted, who, being by me duly sworn, said that he is the Resident Assistant *Assistant* Secretary of said corporation, the National Surety Company; that he knows the corporate seal of said company; that it was affixed to the foregoing instrument by order of the Board of Directors of said company, and that he signed said instrument as Resident Assistant Secretary of said corporation, by the authority of said Board of Directors, and the said S. A. Mitchell acknowledged said instrument to be the free act and deed of said corporation.

[Notarial Seal]

(Signed) GEORGE S. CANFIELD,
Notary Public in and for the State of Washington,
Residing at Spokane, in said State.

Approved as a supersedeas of the decree herein entered on the 28th day of June, 1910.

(Signed) EDWARD WHITSON,
Judge.

[Endorsements]: Bond on Appeal. Filed in the U. S. Circuit Court for the Eastern District of Washington, August 20th, 1910. Frank C. Nash, Clerk.

Citation on Appeal [Original].

UNITED STATES OF AMERICA,—ss.

The President of the United States to the United States of America and to Joseph B. Lindsley, Its Solicitor, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, State of California, within thirty days from the date hereof pursuant to an order allowing an appeal, filed in the office of the Clerk of the Circuit Court of the United States, Ninth Circuit, in and for the Eastern District of Washington, Eastern Division, wherein the Northern Pacific Railway Company, The Mercantile Trust Company, Henry Yeackel and Flora Yeackel, his wife, Wilbur S. Badley and Florence C. Badley, his wife, C. D. Wise and ——— Wise, his wife, R. D. McCully, are defendants and appellants, and The United States of America is complainant and appellee, to show cause, if any there be, why the decree rendered against the said defendants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD WHITSON, Judge of the United States District Court for the Eastern District of Washington, presiding in the

558 *The Northern Pacific Railway Co. et al.*

United States Circuit Court for the Eastern District
of Washington, this 20th day of August, 1910.

EDWARD WHITSON,

District Judge.

Due personal service of this citation made and ad-
mitted and receipt of copy acknowledged this 20th
day of August, 1910.

JOSEPH B. LINDSLEY,

Solicitor for The United States of America.

[Endorsed]: No. 1260. In the U. S. Circuit
Court, District of Washington, Eastern Division.
The United States of America, Plaintiff, vs. North-
ern Pacific Railway Company et al., Defendant.
Citation on Appeal. Filed in the U. S. Circuit
Court, Eastern Dist. of Washington. Aug. 20, 1910.
Frank C. Nash, Clerk.

[Certificate of Clerk U. S. Circuit Court to Record,
etc.]

*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Divi-
sion.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA YEAC-

KEL, His Wife, WILBUR S. BADLEY
and FLORENCE C. BADLEY, His Wife, C.
D. WISE and ——— WISE, His Wife, R. D.
McCULLY, JOHN J. ZEHNER and KATIE
ZEHNER, His Wife,

Defendants.

United States of America,
Eastern District of Washington,—ss.

I, Frank C. Nash, Clerk of the Circuit Court of the United States for the Eastern District of Washington, do hereby certify that the foregoing pages numbered from one (1) to five hundred four (504), inclusive, together with the following exhibits, to wit: Plaintiff's Exhibit 1, The Barnard Map; Plaintiff's Exhibit 2, the Mount Adams Quadrangle; The White Swan Map attached to Plaintiff's Exhibit 3; The Barnard Map attached to Plaintiff's Exhibit 3; Plaintiff's Exhibit 4, being map of Berry & Lodge Survey; Plaintiff's Exhibit 6, being large blue-print of the Indian Reservation; Plaintiff's Exhibit 6, being small White Swan map; Defendants' Exhibit "C," being map of Swartz Survey; Defendants' Exhibit "D," being map of the State of Washington; Defendants' Exhibit "K," being book of township plats, constitute and are a complete, true and correct copy of the record, pleadings, testimony, and all proceedings had in said action, as the same remain on file and of record in said Circuit Court, and that the same which I transmit constitute my return to the order of appeal, lodged and filed in my office on the 20th day of August, A. D. 1910.

And I hereby annex and transmit the original Citation in said suit.

I further certify that the cost of preparing and certifying said record amounts to the sum of \$450.70, and that the same has been paid in full by the defendant and appellant, The Northern Pacific Railway Company.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, at the city of Spokane, in said Eastern District of Washington, in the Ninth Circuit, this 26th day of October, A. D. 1910, and the Independence of the United States of America the One Hundred and Thirty-fifth.

[Seal]

FRANK C. NASH,
Clerk U. S. Circuit Court for the Eastern District
of Washington.

[Endorsed]: No. 1916. United States Circuit Court of Appeals for the Ninth Circuit. The Northern Pacific Railway Company, The Mercantile Trust Company, Henry Yeackel and Flora Yeackel, His Wife, Wilbur S. Badley and Florence C. Badley, His Wife, C. D. Wise and ——— Wise, His Wife, and R. D. McCully, Appellants, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Eastern District of Washington, Eastern Division.

Filed November 18, 1910.

F. D. MONCKTON,
Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

**Order [Extending Time to File Record to October
19, 1910].**

This cause came on duly and regularly for hearing on this 12th day of September, 1910, on motion by appellants for an order granting them thirty days' additional time from the 19th day of September, 1910, within which to prepare and file the record in the above-entitled case with the Clerk of the Circuit Court of Appeals for the Ninth Judicial Circuit at San Francisco, California, and good cause appearing therefor, and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED, That said motion be and the same is hereby granted, and said appellants are hereby given thirty days' additional time

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from the 19th day of September, 1910, within which to file the record in the above-entitled cause with the said Clerk at San Francisco, California.

Dated this 12th day of September, 1910.

EDWARD WHITSON,
Judge.

[Endorsed]: No. 1260. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Northern Pacific Railway Company et al., Appellants, vs. The United States of America, Appellee. Filed Sep. 16, 1910. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 1260.

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), THE MERCANTILE
TRUST COMPANY (a Corporation),
HENRY YEACKEL and FLORA
YEACKEL, His Wife, WILBUR S. BAD-
LEY and FLORENCE C. BADLEY, His
Wife, C. D. WISE and ——— WISE, His
Wife, R. D. McCULLY, JOHN J. ZEHNER
and KATIE ZEHNER, His Wife,
Appellants,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

Order [Extending Time to File Record to November
18, 1910].

This cause came on duly and regularly for hearing
on this 6th day of October, 1910, on motion by appel-

lants for an order granting them thirty days' additional time from the 19th day of October, 1910, making an extension of sixty days in all, within which to prepare and file the record in the above-entitled case with the Clerk of the Circuit Court of Appeals for the Ninth Judicial Circuit at San Francisco, California, and good cause appearing therefor, and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED, That said motion be and the same is hereby granted, and said appellants are hereby given thirty days' additional time from the 19th day of October, 1910, within which to file the record in the above-entitled cause with the said Clerk at San Francisco, California.

Dated this 6th day of October, 1910.

EDWARD WHITSON,
Judge.

[Endorsed]: In the U. S. Circuit Court of Appeals, Ninth Circuit. Northern Pacific Railway Company et al., Plaintiff, vs. The United States of America, Defendant. Order. Filed Oct. 10, 1910. F. D. Monckton, Clerk.

No. 1916. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Enlarging Time to File Record Thereof and to Docket Cause. Refiled Nov. 18, 1910. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

NORTHERN PACIFIC RAILWAY COMPANY
(a Corporation), **THE MERCANTILE**
TRUST COMPANY (a Corporation),
HENRY YEACKEL and **FLORA**
YEACKEL, His Wife, **WILBUR S.**
BADLEY and **FLORENCE C. BADLEY**,
His Wife, **C. D. WISE** and ——— **WISE**,
His Wife, **R. D. McCULLY**, **JOHN J.**
ZEHNER and **KATIE ZEHNER**, His Wife,
Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

**Order [Directing Transmission of Original Ex-
hibits].**

This cause came on duly and regularly for hearing on this 27th day of October, 1910, upon motion of appellants for an order directing the Clerk of this court to send to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, the original exhibits in the above-entitled cause, under his certificate that the same are such originals, and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED, That the Clerk of this Court be and he is hereby directed to send to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, under his certificate, that the same are originals, the following original exhibits:

1. Plaintiff's Exhibit Number 1.
2. Plaintiff's Exhibit Number 2.
3. Plaintiff's Exhibit Number 3.
4. Plaintiff's Exhibit Number 4.
5. Plaintiff's Exhibit Number 5.
6. Plaintiff's Exhibit Number 6.
7. Plaintiff's Exhibit Number 7.
8. Plaintiff's Exhibit Number 8.
9. Plaintiff's Exhibit Number 9.
10. Plaintiff's Exhibit Number 10.
11. Defendant's Exhibit "A."
12. Defendant's Exhibit "B."
13. Defendant's Exhibit "C."
14. Defendant's Exhibit "D."
15. Defendant's Exhibit "E."
16. Defendant's Exhibit "F."
17. Defendant's Exhibit "G."
18. Defendant's Exhibit "H."
19. Defendant's Exhibit "I."
20. Defendant's Exhibit "K."
21. Defendant's Exhibit "L."

Done in open court this 27th day of October, 1910.

C. H. HANFORD,

Judge.

O. K.—C. A. MacMILLAR,

Asst. U. S. Atty.

[Endorsed]: No. 1260. In the U. S. Circuit Court of Appeals, Ninth Circuit. Northern Pacific Railway Company et al., Plaintiffs, vs. The United States of America, Defendant. Order.

No. 1916. United States Circuit Court of Appeals for the Ninth Circuit. Filed Nov. 18, 1910. F. D. Monckton, Clerk.

1 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

(Addenda.)

2 *Index to Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.*

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3 At a Stated Term, to wit: The October Term, A. D. 1910, of the United States Circuit Court of Appeals for the Ninth Circuit, Held at the Court Room, in the City and County of San Francisco, on Tuesday, the Twenty-first Day of February, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

Present:

Honorable William B. Gilbert, Circuit Judge.
Honorable William W. Morrow, Circuit Judge.
Honorable Charles E. Wolverton, District Judge.

No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY et al., Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Order of Submission, etc.

Upon motion of Mr. W. P. Bell, Attorney-General of the State of Washington, it is ordered that Mr. Bell be, and hereby is granted

leave to file a brief on behalf of the State of Washington in the above-entitled cause.

Thereupon, the appeal in the above-entitled cause was argued by Mr. Charles Donnelly, counsel for the appellants, and by Mr. United States Attorney Oscar Cain, counsel for the appellee, and submitted to the Court for consideration and decision.

4 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

VS.

THE UNITED STATES OF AMERICA, Appellee.

Opinion U. S. Circuit Court of Appeals.

Appeal from the United States Circuit Court for the Eastern District of Washington, Eastern Division.

In Equity.

Action to Cancel Patents to Certain Lands in the State of Washington.

On June 9, 1855, a treaty was concluded between the United States and fourteen confederated tribes and bands of Indians known as the Yakima Indians, by the terms of which the Indians
5 ceded to the United States a large tract of land in the Territory of Washington, reserving out of it, however, for their "use and occupation" a tract of land described by courses and topographical features of the region, as follows:

Commencing on the Yakima River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakima; eight miles below the mouth of the Satass River; and thence up to the Yakima River to the place of beginning.

All of the foregoing tract, the treaty provided, should be "set apart and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes and bands of Indians as an Indian Reservation." The treaty was ratified March

8, and proclaimed April 18, 1859, (12 Stat. L. 951). On April 30, 1857, Governor Stevens who had concluded the treaty, forwarded to the Commissioner of Indian Affairs at Washington a "map of the Indian Nations and tribes of the territory of Washington and of the territory of Nebraska west of the mouth of the Yellowstone." Upon

6 this map appears, among many others, a tracing of the Yakima Indian Reservation. An original map, known as the "White Swan Map" and bearing the inscription, "I. I. Stevens Map, March 1857," appears to have been deposited at the Yakima Agency, having, it is alleged, been given by Governor Stevens to an Indian named White Swan. This map shows the boundaries of the Yakima Reservation only, and appears to be a reproduction, in part at least, of the tracing of that reservation as it is shown on the larger map transmitted to Washington by Governor Stevens April 30, 1857.

In 1861, the Superintendent of Indian Affairs for Washington Territory directed Messrs. Berry and Lodge, surveyors, to make a survey of the Southern boundary of the reservation. Such a survey appears to have been made in that year and a map of it was filed in the office of the Commissioner of Indian Affairs.

July 2, 1864, Congress passed an Act (13 Stat. L. 365) incorporating the Northern Pacific Railroad Company. By the third section of the Act a grant of lands was made to that company in the following terms:

"That there be, and hereby is, granted to the 'Northern Pacific Railroad Company,' its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alter-

7 nate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time (of definite location), any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

The map of definite location of the railroad opposite the lands involved in this suit was filed June 25, 1883, and approved June 28, 1883, and the railroad was duly constructed. All of the lands in question were within the primary limits or the indemnity limits of the grant, and the defendants (appellants here) are entitled to them unless they were reserved by the treaty of 1855.

In 1886, the southern boundary of the reservation for a distance of forty-seven and one-half miles from the Yakima River appears to have been surveyed by one Harry J. Clark; but the work was 8 poorly done and all evidences of it were soon lost; and in 1889 the agent at the Yakima Agency wrote to the Commissioner of Indian Affairs urging that a re-survey of the southern boundary and an original survey of the western boundary of the reservation be made. The western boundary, he said, ran "along the main ridge of the Cascade Mountains south and west of Mount Adams;" and he said it was a subject of disagreement as to which was the "main ridge" there referred to, the Indians claiming that the main ridge extended to the base of Mount Adams on the south and east, while white men with diverse interests claimed that it was farther east. All of the country south and east of Mount Adams for forty or fifty miles was regarded as part of the Cascade range, being wholly mountainous, and therefore, because of this uncertainty, he thought a survey necessary.

As a result of this letter and with a view to settling the questions suggested in it, the Department, in 1890, closed a contract with George A. Schwartz, United States Deputy Surveyor, for a "re-survey and survey of the south and west boundary of the Yakima Indian Reservation"; and in September, October and November of that year the survey was completed by him. In July, 1891, the survey thus made was examined by Jacob E. Noel, acting under instruction from the United States Surveyor General for the State of Washington. He reported that great care had been taken by Deputy Surveyor Schwartz in establishing the lines, and that the work had been carefully and skillfully done. On receipt of the returns of the survey, together with Mr. Noel's report thereon, it was accepted by the Commissioner of the General Land Office October 21, 1891. 9

The instructions of the United States Surveyor General for the State of Washington under which this Schwartz survey was made required that the boundary line should be run commencing at a point on the south bank of the Yakima River at the southeastern corner of the reservation, and running thence westward $47\frac{1}{2}$ miles along the southern boundary of the reservation. This survey as directed to be made was run in a direction reverse to that of the call of the Treaty, and, so far as material to the question under consideration, the instructions were as follows:

"From the $47\frac{1}{2}$ mile post, the line to be surveyed extends along the divide separating the waters of the Satus from those flowing into the Columbia, 'to the divide' between the waters of the Kliekitat and Pisco Rivers; thence along said divide to 'the spur whence flow the waters of said 'rivers; thence up said spur to the main 'ridge of the Cascade Mountains; thence 'northerly along said ridge, passing south and east of Mount Adams, 'to the southern tributary of the Attah-nam river—to the established corner of fractional sections 6 and 31, on the south boundary of Township 12 north, range 15 east, Willamette Meridian. According to the statement of the Agent in charge of the Yakima Agency, 'the question as to which

to the main ridge of the Cascade Mountains referred to in the treaty is a subject of disagreement, the Indians claiming that the
 10 main ridge extends to the base of Mount Adams on the south and east—white men with diverse interests claiming the said ridge to be further east;’ also ‘that no river known as the Pisco, is shown on any map, and that he has found no person, white or Indian, who has knowledge of any river of that name’, ‘that the river designated as the Toppenish on the map of 1887, is the Pisco referred to in the Treaty. It is delineated on the diagram, as rising about six miles nearly due east of Mount Adams and a very short distance north of the second Standard Parallel.’

It is, therefore, advisable, that before you proceed to definitely locate and extend the boundary of the Reservation from the 47½ mile post, you confer with the Agent in charge of the Yakima Agency, and with other white persons, and Indians, familiar with the country, and obtain all the information possible that will tend to a proper location and establishment of this section of the boundary line according to the provisions of the treaty of June 9, 1855.

The field notes of this survey from the 47th mile post to the 100-mile post are in the record. In the general description of the survey, the surveyor makes the following report:

“Up to the fifty-first mile corner there is no disagreement whatever regarding the location of the line, that I could learn. The line follows the top of a well-defined ridge acknowledged to be the true
 11 divide by both the whites and Indians with whom I conversed. The line in dispute is from the fifty-first mile ‘Onward’ in a northerly direction. The Indians claim that the line passes along the top of a low ridge of hills bearing in a southwesterly direction and terminates at the Big Klickitat River and that this should be a continuation of their southern boundary; upon the western end of said ridge there is a round hill called Gray Back mountain.

“Thence it is claimed by the Indians the line bears in a northwesterly direction crossing the Klickitat River to the base of Mt. Adams.

“From a consultation with Mr. Stabler, the U. S. Indian Agent at Fort Simcoe and from our understanding of the description of this boundary as given in the treaty of June, 1855. U. S. Stats. Vol. —, page 361, I adopt this as the intended course and continue the line along top of the divide which bears in a northerly direction between the waters of the Satas and those flowing into the Klickitat River, passing through a country heavily timbered with first-class yellow pine; the land is chiefly valuable for its timber and grazing, being too dry and the soil too sandy for profitable agriculture.

“At the seventy-seventh mile corner begin to ascend the Simcoe mountains whence flows the Piscoe or Topinish river. All the Indians with whom I have talked concerning the boundary said that stream now known as the ‘Topinish’ was in former times called Piscoe.’ Said stream flows east into the Satas which emptied into the Yakima river a few miles below its confluence.

12 "Thence I ran in a northerly direction along top of high mountain which is the divide between the Klickitat and the waters flowing into the Yakima river and is not the main range of the Cascade mountains which cannot be reached without crossing the Klickitat river.

"I followed said divide to a low saddle where the southern tributary of the Ahtah-num heads and also a tributary of the Klickitat which flows west."

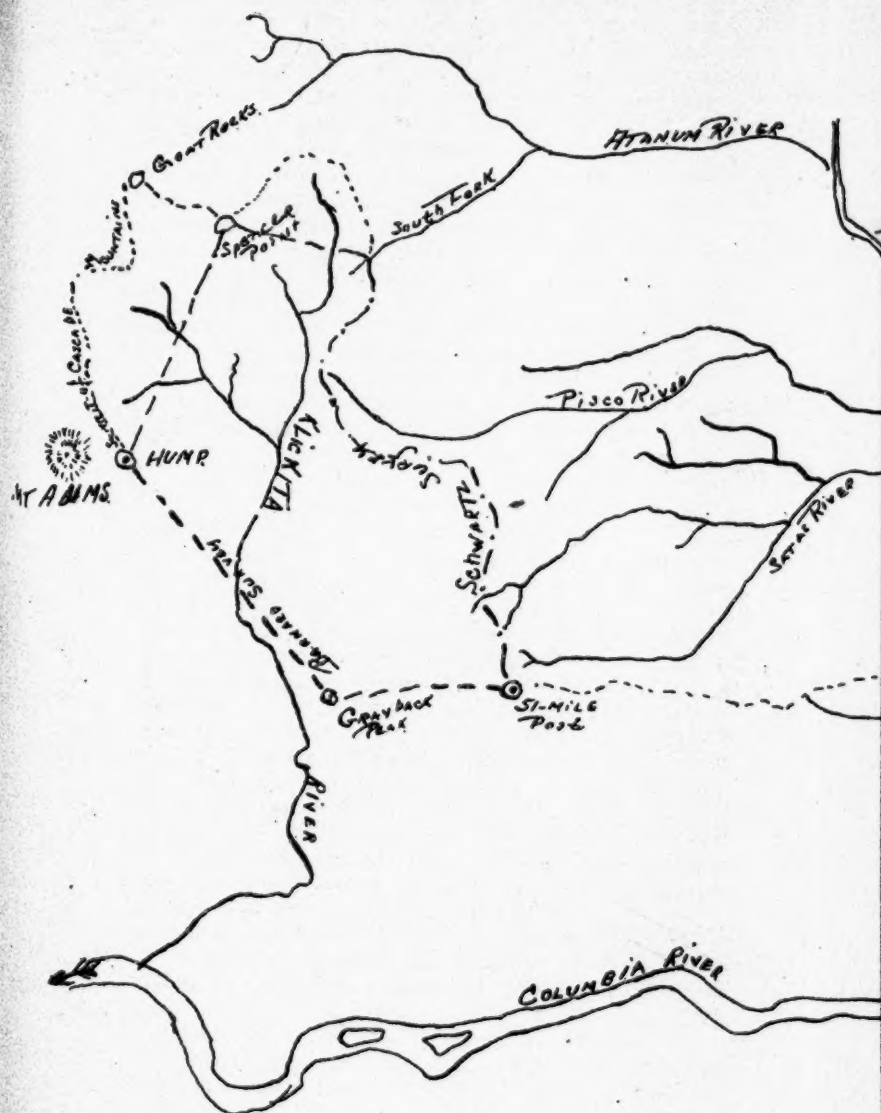
In 1885 and 1896, patents were issued to the Northern Pacific Railroad Company for a large part of the lands involved in this suit. In the year, 1896, the Northern Pacific Railway Company, a corporation organized under the laws of Wisconsin, purchased at foreclosure sale the patented lands of the Railroad Company, and the rights of that company to receive lands not yet patented. The remaining patents were issued directly to the Railway Company in 1904, pursuant to the rights thus acquired at the foreclosure sale.

In 1896 question was again raised as to what were the true boundaries of the reservation and as to whether the Schwartz survey had correctly defined them; and in 1899, E. C. Barnard, then a topographer of the geological survey, acting under the direction of the Secretary of the Interior, visited the reservation, and after examination submitted, on January 12, 1900, a report and map marking out the boundaries of the reservation, as he conceived they *ought* to be marked out. The maps attached to this report were the old White

13 *Sawn* map referred to above; and a map made by Barnard himself, in which the boundaries of the reservation as defined by Schwartz in 1890, and these boundaries as Barnard thought they ought to be are shown.

The annexed Sketch exhibits the general outline of the reservation and the lines of the Schwartz and Barnard surveys of the western boundary as shown on that map:

(Here follows map marked p. 13a.)



14 On April 20, 1900, the Secretary of the Interior transmitted Barnard's report to the Speaker of the House of Representatives with a draft of a bill granting authority for the detail of an Indian Inspector to negotiate an agreement with the Indians for an adjustment of their claim to the lands lying without the Schwartz but within the Barnard line of the reservation; and subsequently Congress passed an Act, approved Dec. 21, 1904, (33 Stat. at L. 595) section 1 of which reads as follows:

"That the Secretary of the Interior, and he is hereby authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands embraced in the Yakima Indian Reservation proper, in the state of Washington, set aside and established by treaty with the Yakima Nation of Indians, dated June eighth, eighteen hundred and fifty-five; Provided, That the claim of said Indians to the tract of land adjoining their present reservation on the west, excluded by erroneous boundary survey and containing approximately two hundred and ninety-three thousand eight hundred and thirty-seven acres, according to the findings, after examination of Mr. E. C. Barnard, topographer of the Geological Survey, approved by the Secretary of the Interior April seventh, nineteen hundred, is hereby recognized, and the said tract shall be regarded as a part of the Yakima Indian

Reservation for the purpose of this Act; Provided Further,
15 That where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by bona fide settlers or purchasers under the public land laws, such rights shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit and in the construction of irrigation works on the Yakima Indian Reservation."

The lines of the Barnard Survey here recognized and regarded as describing the western boundary of the reservation, enclose 293,837 acres lying outside the boundary of the Schwartz survey. The lands here in question lie within this area, that is to say, without the lines of the reservation as surveyed by Schwartz, but within those lines as marked out by Barnard. After the passage of the Act of December 21, 1904, the Government demanded of the Railway Company that it re-survey them and a re-conveyance being refused, this suit was begun, resulting in a decree directing cancellation of the patents.

In the Act of Congress of February 22, 1889 (25 Stat. 676, 679), admitting certain territories including the territory of Washington into the Union, it was provided that upon the admission of the proposed states sections 16 and 36 of every township should be granted to the states respectively for the support of common schools.

In the above mentioned act of December 21, 1904, it was provided that where valid rights had been acquired prior to March 5,
16 1904, to lands within the tract included within the lines of the Barnard Survey, and without the lines of the Schwartz survey, by bona fide settlers or purchasers under the public land laws, such rights should not be abridged; but it appears that the Land Office at Washington has held that the State of Washington was not a bona fide purchaser of lands included in such tract within

the meaning of the act and has also held that as the state could select other lands in lieu of the lands so selected within such tract, it could be in no way injured by the loss, and accordingly the Land Department has refused to recognize the right of the state to lands within the tract in controversy. The State of Washington, seeking to protect its interest in this tract of land, has applied for and obtained leave to file a brief in this case by its Attorney-General, in which it is represented that the proclamations of the President creating Forest Reserves in the State of Washington include 12,000,000 acres of land within the state and that while the act of December 21, 1904, permits the state to select other lands in place of those lost to the state by reason of the adoption of the Barnard Survey of the reservation, the fact is that the state is prevented from making such selections by the establishment of the forest reservations which have included all the land of any value remaining in the public domain within the state. This loss of the state by the Barnard Survey and by the action of the Land Department is said to be 23,138.79 acres.

The Court below entered a decree in favor of the United States upon the authority and validity of the Barnard Survey. The defendants have brought the case here on appeal.

Charles W. Bunn, Charles Donnelly, for Appellants.
Oscar Cain, U. S. Attorney, and E. C. Macdonald, Ass't U. S. Attorney, for Appellee.
W. P. Bell, Attorney General for the State of Washington.

Before Gilbert and Morrow, Circuit Judges, and Wolverton, District Judge.

MORROW, Circuit Judge, after stating the facts as above, delivered the opinion of the Court:

The question to be determined in this case is the westerly boundary of the Yakima Indian Reservation as described in the Treaty of June 5, 1855 (12 Stat. 1952).

It will be convenient to repeat the description contained in the treaty, identifying its calls by numbers as follows:

(1) Commencing on the Yakima River, at the mouth of the Attah-nam River;

(2) thence westerly along said Attah-nam River to the Forks;

(3) thence along the southern tributary to the Cascade Mountains;

(4) thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco rivers;

(5) thence down said spur to the divide between the waters of said rivers;

(6) thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River;

(7) thence along said divide to the main Yakima, eight miles below the mouth of the Satass River;

(8) and thence up the Yakima River to the place of beginning.

There is no controversy as to the location of the point "commencing on the Yakima River, at the mouth of the Attah-nam River," nor is there any controversy as to the second call, "westerly along said Attah-nam River to the forks," nor as to the third call, "along the southern tributary"; but the controversy begins with the terminal point of this call, "the Cascade Mountains."

The call is limited by the Schwartz survey to the southern boundary of the Attah-nam River and terminates where that tributary takes its rise in a range of the Cascade Mountains. But — is now known that this is not the main range of the Cascade Mountains and that the southern tributary of the Attah-nam River does not take its rise in that range. In the general description of his survey Schwartz reported that this range along which he ran the western boundary of the reservation, "is not the main range of the Cascade Mountains." His instructions were that the western boundary line

coming up from the south should be "the main ridge of the Cascade Mountains, thence northerly along said ridge, passing south and east of Mount Adams, to the southern tributary of the Attah-nam River." He was further instructed that the question as to which was the main ridge of the Cascade Mountains referred to in the Treaty was a subject of disagreement; the Indians claiming that the main ridge extended to the base of Mount Adams on the south and east—white men with diverse interests claiming the said ridge to be further east." He was further instructed: "It is, therefore, advisable, that before you proceed to definitely locate and extend the boundary of the Reservation from the 47½ mile post, you confer with the Agent in charge of the Yakima Agency, and with other white persons, and Indians, familiar with the country, and obtain all the information possible that will tend to a proper location and establishment of this section of the boundary line according to the provisions of the treaty of June 9, 1855." Schwartz appears to have consulted with the Indian Agent in charge of the Yakima Agency, and with other white persons and Indians, and found and identified the main ridge of the Cascade Mountains. But he did not carry his survey along that ridge, as instructed, but along a ridge 15 to 20 miles further east. His reason for running his line along the eastern ridge instead of the main ridge to the west was that the former was a ridge dividing the waters of the Satass and Klickitat Rivers, and along which he could carry his line to the source of the southern tributary of the Attah-nam River "without crossing the Klickitat River and the treaty did not call for that." But his instructions did not require him to follow that ridge or to avoid crossing the Klickitat River; on the contrary, he was instructed to ascertain and follow the main ridge of the Cascade Mountains; nor did any call of the treaty require him to follow the ridge dividing the waters of the Satass and Klickitat Rivers.

This brings us to the consideration of one of the controlling questions in this case. Between the main ridge of the Cascade Mountains, along which the Fourth Call of the treaty locates the western boundary and the apparent terminal point of the Third Call of the treaty at the source of the Attah-nam River in the Cascade Moun-

tains, there is a gap of 15 to 20 miles; that is to say, the Third Call of the treaty following the southern tributary of the Attah-nam River does not reach the main ridge of the Cascade Mountains, but appears to terminate in an inferior eastern ridge of the Cascade Mountains. Between that ridge and the summit of the main ridge there is a distance of from 15 to 20 miles, and a straight line between these two points leaves the eastern ridge and crosses the headwaters of the Klickitat River to the main or western ridge. Is this gap in the description of the treaty boundary of such a character as to defeat the western boundary along the main ridge of the Cascade Mountains? We think not. Governor Stevens who negotiated the treaty with the Indians had a map made in 1857, two years after the making of the treaty and two years before its ratification, showing

the location of the Indian nations and tribes of the Territory
21 of Washington and the Territory of Nebraska west of the mouth of the Yellowstone. On this map is a tracing of the Yakima Indian Reservation which clearly carries the western boundary of the reservation to and southerly along the main ridge of the Cascade Mountains, passing south and east of Mount Adams as required in the Fourth Call of the treaty. The map is, however, incorrect in this, that it appears to locate the rise of the southern tributary of the Attah-nam River in the main ridge of the Cascade Mountains. There is in the record a copy of another map, the original of which is said to have been deposited at the Yakima Agency, having, it is alleged, been given by Governor Stevens to an Indian named White Swan; hence the map is named the "White Swan Map." This map shows the boundaries of the Yakima Reservation and appears to be a reproduction, in part at least, of the tracing of that reservation as it is shown on the larger map and transmitted to Washington by Governor Stevens in 1857. On this map the northern boundary of the reservation follows the southern tributary of the Attah-nam River to a point manifestly on the main ridge of the Cascade Mountains, thence southerly along the main ridge for a short distance, when the boundary turns eastwardly passing south and east of Mount Adams.

The error in these maps in locating the head or source of the southern tributary of the Attah-nam River in the main ridge of the Cascade Mountains is not difficult of explanation. The Cascade

Mountains is a range of considerable length and elevation.
22 extending north and south through Oregon, Washington, and British Columbia, and running nearly parallel to the Pacific Coast Line. In the State of Washington this range forms an elevated plateau with a general elevation of from 5,000 to 7,000 feet, rising into a rugged and complex order of ridges and peaks from 50 to 100 miles in width. Along the main axis of the range are a number of high peaks, among other-, Mount Adams, with an elevation of 12,325 feet. This mountain with its connecting ridge and spurs is a prominent feature in the landscape, and would be a natural monument, and the connecting main ridge of the Cascade Mountains a natural boundary for such a large tract of land as the Yakima Indian Reservation described in the treaty of 1855. But at the

time this treaty was made the country had not been fully explored, the approaches to this main ridge by water courses had not been definitely located, and the topography of the country was not accurately known. Mr. Barnard in his report dated January 12, 1900, concerning the disputed western boundary line of the reservation says:

"From the imperfect topographical knowledge of the country it was believed that both the Atanum and Pisco rivers reached the summit of the Cascade Mountains, but such is not the case although from a distance it would be a fair presumption."

With the information available to Governor Stevens he supposed the sources of the Attah-nam River to be in the main ridge of the Cascade Mountains, and he so placed it upon his map. Now, while

23 this has since been discovered to be a mistake, the fact remains that he located the western boundary of the reservation on the main ridge of the Cascade Mountains, and as this is the most certain and material call of the description it should prevail. This is in accordance with the general rule that has been adopted by the courts for solving such a question. In *Newsom v. Pryor*, 7 Wheat. 7, the Supreme Court of the United States had before it a similar question, and the opinion of the court delivered by Mr. Chief Justice Marshall, is peculiarly applicable to the facts in the present case. He says:

"In consequence of returning plats, where no actual surveys had been made, and where the country had been very imperfectly explored, the description contained in the patent often varies materially from the actual appearance of the land intended to be acquired. Natural objects are called for, in places where they are not to be found; and the same objects are found, where the surveyor did not suppose them to be. In a country of a tolerably regular surface, no considerable inconvenience will result from this circumstance. The course and distance of the patent will satisfy the person claiming under it, and seldom interfere with the rights of others. But in a country where we find considerable water-courses and mountains, there must be more difficulty. The surveyor calls for some known object, but totally miscalculates its courses, distances, or both, from some given point which he has made the beginning of his survey; and there is a variance in the different calls of his survey, and of the patent founded on it. As in this case,

24 the second line is to run south 894 poles, to a stake, crossing the river. This distance will not reach the river; and must be continued to 1222 poles, to cross the river. The distance must be disregarded, and this line so extended as to cross the river, or the distance must control the call for crossing the river.

"These difficulties have occurred frequently, and must be expected to occur frequently, where grants are made without an actual survey. Some general rule of construction must be adopted; and that rule must be observed, or the conflicting claims of individuals must remain for ever uncertain. The courts of Tennessee, and all other courts by whom causes of this description have been decided, have adopted the same principle, and have adhered to it. It is, that

the most material and most certain calls shall control those which are less material, and less certain. A call for a natural object, as a river, a known stream, a spring, or even a marked tree, shall control both course and distance."

Under this rule distance must be disregarded and the more material and certain call accepted.

But it is contended by the appellant that the Barnard survey recognized by Congress in the Act of December 21, 1904 as locating the boundaries of the reservation in accordance with the treaty of June 9, 1855, and followed by the Court below in its decree, is purely arbitrary; that the lines so recognized and adopted do not follow the treaty calls from the head of the south fork of the

25 Attah-nam River; but on the contrary, it is contended they are in direct collision with such calls. This objection is based upon the claim that by the Fourth Call the line from the point where the Cascade Mountains were reached was to run southerly along the mountains and divides separating the waters of the Klickitat and Pisco Rivers. The language of the Fourth Call is as follows:

"Thence southerly, along the main ridge of said mountains, passing south and east of Mount Adams to the spur whence flow the waters of the Klickitat and Pisco Rivers."

If we are correct in our opinion that the topography of the country was not definitely known or correctly understood by the framers of the treaty, this objection is without any serious force, if, indeed, it is not completely answered by the fact that on the Stevens map the Klickitat River is shown as taking its rise on the west side of the main Cascade range and flows south on the west side of Mount Adams, while the Pisco is there shown on the east side and according to Barnard's report it was believed that it reached the summit of the Cascade Mountains. If this was the information possessed by the framers of the treaty and in accordance with that information they were running this call southerly passing south and east of Mount Adams to a spur on that mountain, then the Barnard survey locates the Fourth Call of the western boundary in accordance with the understanding and intention of the parties to the treaty.

26 The United States might object to the Barnard survey on the ground that it does not in fact reach the ridge of the Cascade Mountains for a beginning of the Fourth Call, but starts on a ridge a little to the east of the main ridge. As this feature of the boundary does not, however, affect any of the land in suit and the objection is not made, we do not stop to discuss that question.

The Fourth Call of the treaty terminates, as we have said, on a spur of Mount Adams which has been reached by a line passing south and east of the mountain. Mount Adams is a prominent peak in that region and a monument easily identified, and a spur on the southeast side would also be easily identified, and the evidence appears to support that conclusion.

In Barnard's report he says: "The testimony of the Indians, Chief

Spencer and Stick Joe, given in the report of last year, is repeated below:

"Stick Joe said that in or about 1860 he accompanied a party along a portion of the southern boundary. They left the old military road at mile-post 29, this being the point where the reservation line crosses the same. They then proceeded on the line which follows a well-defined ridge to a peak called Grayback, on the summit of which a marked wooden post set in the ground was found. At this point the surveyor, agent, or officer accompanying the party took out a telescope or some surveying instrument, and sighting toward Mount Adams, pointed out a conical hump on the southeast slope of the same, told the party that the line now went straight to that point." * * *

"The above description of the route followed was given in a graphical way, with gestures that leads me to believe, it was an actual experience.

"Chief Spencer, on being asked to tell what he knew of the boundary line of the reserve said that Governor Geary, who succeeded Governor Stevens, described the limits of the reserve to him as follows:

"Up the Atanum River from its mouth to the mouth of the South Fork; thence up the South Fork to the head; thence directly west across the Little Klickitat to a high point just this side of Goat Rocks; thence to a conical hump on the southeast slope of Mount Adams."

Barnard in commenting upon this call of the boundary says:

"This ridge is well defined for a considerable distance toward Mount Adams, when it becomes lower and flattens out and the line might swing around the eastern slope to reach the conical hump described by Stick Joe, which is a well-defined point easily recognized, 7,500 feet high, or it might reach the conical hump by passing over the summit of Mount Adams. The boundary line would then continue in a straight line to Grayback Peak."

The Schwartz Survey does not pretend to reach Mount Adams or any spur of that mountain, but turns aside at the 51st mile post and proceeds northerly to avoid crossing the Klickitat river.

28 We think the superior monument of Mount Adams should prevail here as the more certain call of the main ridge of the Cascade Mountains in the third call, and for the same reasons.

The fifth call of the treaty is as follows:

"Thence down said spur to the divide between the waters of said river."

And the sixth call continues:

"Thence along said divide to the divide separating the waters of the Sataas river from those flowing into the Columbia river."

The last call carries the boundary to, and perhaps beyond, the 51st mile post mentioned in the Schwartz survey, where the controversy ends.

If we are correct in following the language of the treaty and locating the western boundary of the reservation along the main ridge of the Cascade Mountains to a spur of Mount Adams, reached

by passing south and east of that mountain, then the Barnard Survey must be accepted as properly locating the fifth and sixth calls, and the objection that the divide mentioned in these two calls is not continuous and is broken by the crossing of the Klickitat river and its tributaries yields, as in the fourth call, to the superior call of Mount Adams and the main ridge of the Cascade Mountains.

It is next contended that if there is a doubt as to the location of the boundaries called for by the treaty, that doubt should be resolved in favor of the patents issued to the Northern Pacific

29 Railway Company and its predecessor in interest. We do not admit that there is any doubt as to the proper location of the western boundary of this reservation, but assuming that there is, the rule which resolves such a doubt in favor of the patent issued by the United State does not obtain in this case.

The United States brings this action for itself and on behalf of the Indians as their trustee and guardian. The Yakima Indian Reservation is a tract of land reserved by the Indians out of a much larger tract claimed and occupied by them prior to 1855, and which larger tract they ceded and conveyed to the United States with an agreement with respect to the reserved tract that it should be "set apart and so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes and bands of Indians as an Indian Reservation."

The United States owed the duty of trustee and guardian to preserve the rights of the Indians in the tract reserved and by the treaty it agreed to survey the boundaries of the reservation, and set it apart for the exclusive use and benefit of the Indians. It could not therefore by an incorrect survey deprive the Indians of their right of occupation of the land within the legal boundaries of the reservation as established by the treaty. This is the general and well-established law of trust and guardianship in support of which authorities need not be cited. The law has been applied to controversies relating to lands occupied by the Indians in the broadest terms.

30 In *Leavenworth, etc. R. R. Co. v. United States*, 92 U. S. 733, the railroad company claimed title to certain lands within the Osage country in Kansas. These lands had been certified by the Commissioner of the General Land Office upon the approval of the Secretary of the Interior, and by such certificate conveyed to the Governor of Kansas as forming part of a grant made by Congress in 1863 to the State to aid in the construction of certain railroads. The lands were conveyed by the Governor by patent to the railroad company. At the time of the grant by Congress to the State of Kansas the lands were occupied by the Osage Indians, but subsequently the Indians conveyed these lands by treaty stipulation to the United States. It was contended by the United States in support of its suit to establish title to these lands that Congress had not disposed of the Osage lands by the Act of 1863, and had not intended to do so. The railroad company contended that, although the grant did not operate upon any specific tracts until the railroad was located, it then took effect upon those in controversy, as they by

reason of the extinction of the Osage title, the lands had become, in the proper sense of the term, public lands. The Supreme Court denied the contention of the railroad company and held that "the Indians are acknowledged to have unquestionable right to the lands they occupy, until it shall be extinguished by a voluntary cession to the government, and * * * that right was declared
31 to be as sacred as the title of the United States to the fee."

It was also held in that case that:

"As the transfer of any part of an Indian Reservation secured by treaty would also involve a gross breach of the public faith, the presumption is conclusive that Congress never meant to grant it."

It was further said that:

"Only the public lands owned absolutely by the United States are subject to survey and division into sections, and to them alone this grant is applicable. It embraces such as could be sold and enjoyed, and not those which the Indians, pursuant to treaty stipulations, were left free to occupy."

In the late case of *Stewart v. United States*, 206 U. S. 185, referring to the sale of these lands under the treaty with the Osage Indians, the Supreme Court said:

"Except for the treaty between the United States and the Osage Indians, relative to the lands in question, and the passage of appropriate legislation by the United States, the lands would never have been sold, as they were not public lands of the United States for the sale of which Congress had already provided under its general legislation."

In *Minnesota v. Hitchcock*, 185 U. S. 373, 389, the Supreme Court held that "the Indian's right of occupancy has always been held to be sacred; something not to be taken from him except
32 by his consent, and then upon such consideration as should be agreed upon."

The Indian's right of occupancy to the entire tract within the boundaries of the reservation as described by the treaty of 1855 had not been extinguished by the United States, at the time of the grant of lands to the Northern Pacific Railroad Company by the Act of July 2, 1864 (13 Stat. 363). That Act granted certain sections of land on the line of the road to which the United States had "full title" and which had not been "reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims or rights at the time the line of said road was definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office." To the lands between the Schwartz and Barnard surveys the Indians had a "right of occupancy" which, by the express terms of the grant to the railroad company excluded it from that grant, and the officers of the land department were without authority to issue patents to the railroad company for any of the lands within the reservation. *Leavenworth, etc. R. R. Co. v. United States*, 92 U. S. 733, 739. The patents so issued were therefore issued by the land department through inadvertence and mistake and without the fault, concurrence or acquiescence of the

Indians, or the United States, their guardian and trustee, and should be cancelled.

The appellants claim that they were bona fide purchasers and as such entitled to protection under the Act of March 2, 1896 33 (29 Stat. 42); and that under section 8 of the Act of March 3, 1891 (26 Stat. 1093, 1099) the statute as to all patents issued more than six years prior to the commencement of the action was barred. In our opinion these statutes relate to patents issued for lands within the public domain and the contention of the appellants is answered by the conclusion we have reached—that the lands within the Yakima Indian Reservation had never been a part of the public domain, and never subject to grant or sale under any statute providing for the disposal of the public lands of the United States.

In the court below the deposition of the author of the Barnard survey was taken on behalf of the United States. He identified the lands mentioned in the bill of complaint as being within the reservation, with certain exceptions, which he said he could only determine upon field examination. In the decree these excepted lands were excluded from its operation, and we think, correctly, upon the evidence before the court.

The decree of the Circuit Court is affirmed.

(Endorsed:) Opinion Filed, Nov. 6, 1911. F. D. Monckton, Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

34 United States Circuit Court of Appeals for the Ninth Circuit

No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

VS.

THE UNITED STATES OF AMERICA, Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

Decree U. S. Circuit Court of Appeals.

This cause came on to be heard on the Transcript of the Record from the Circuit Court of the United States for the Eastern District of Washington, Eastern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed and entered November 6, 1911. F. D. Monckton, Clerk.

35 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Petition for Appeal to Supreme Court U. S.

The above named appellants respectfully show that the above-entitled cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit, and that a decree was therein rendered on the 6th day of November, 1911, affirming the decree of the Circuit Court of the United States for the Eastern District of Washington, and that the matter in controversy in said suit exceeds one thousand dollars (\$1,000.00) besides costs, and that this cause is not one in which the United States Circuit Court of Appeals for the Ninth Circuit has final jurisdiction and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

28 Wherefore, they pray that an appeal be allowed them in the above-entitled cause, and that the clerk of the United States Circuit Court of Appeals for the Ninth Circuit be directed to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States in order that the errors complained of in the Assignment of Errors, herewith filed, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

C. W. BUNN AND

CHARLES DONNELLY,

Solicitors for Appellants.

And now, to-wit, on the 20th day of November, 1911, being a day of the same term of Court in which the above-mentioned decree was rendered and entered, it is ordered that the above appeal be allowed as prayed for.

WM. B. GILBERT,

*Presiding Judge of the United States Circuit
Court of Appeals for the Ninth Circuit.*

(Endorsed:) Petition for Appeal to Supreme Court U. S. Filed Nov. 22, 1911. F. D. Monckton, Clerk.

37 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

VS.

THE UNITED STATES OF AMERICA, Appellee.

Assignment of Errors.

Come now the above named appellants and say that in the decree herein made and entered on the 6th day of November, 1911, there is manifest error, and they file the following assignment of errors committed and happening in the said cause upon which they will rely in their appeal from such decree:

1. The Court erred in holding that the Schwartz survey of 1890 does not correctly define the western boundary of the Yakima Indian Reservation.

2. The Court erred in refusing to hold that any doubt as to the location of the boundaries of the Yakima Indian Reservation must be resolved in favor of the patent.

38 3. The Court erred in refusing to hold that as bona fide purchasers of the lands in question appellants are entitled to them under the act of March 2, 1896.

4. The Court erred in refusing to hold that as to all patents issued more than six years prior to the commencement of the suit, the suit is barred by the Statute of Limitations.

5. The Court erred in affirming the decree of the Circuit Court of the United States for the Eastern District of Washington.

Wherefore, the above named appellants conceiving themselves aggrieved by the said decree made and entered as aforesaid pray that said decree be reversed and that a decree be entered herein dismissing appellee's bill.

C. W. BUNN AND
CHARLES DONNELLY,
Solicitors for Appellants.

(Endorsed:) Assignment of Errors. Filed Nov. 22, 1911. F. D. Monckton, Clerk.

39 United States Circuit Court of Appeals for the Ninth Circuit.
No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

VS.

THE UNITED STATES OF AMERICA, Appellee.

Bond on Appeal to Supreme Court U. S.

Know all men by these presents: That we, the Northern Pacific Railway Company, a corporation, The Mercantile Trust Company, Henry Yeackel and Flora Yeackel, His Wife, Wilbur S. Badley and Florence C. Badley, His Wife, C. D. Wise, and — Wise, His Wife, and F. D. McCully, as principals, and the National Surety Company, a corporation, as surety, are held and firmly bound unto the United States of America, in the sum of fifty thousand dollars (\$50,000.00) to be paid to said United States of America, for the payment of which well and truly to be made, we bind ourselves, jointly and severally, and each of our successors and assigns, firmly by these presents.

40 Sealed with our seals and dated this 15th day of November, 1911.

Whereas, the above named appellants have prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered against them in the United States Circuit Court of Appeals for the Ninth Circuit, on the 6th day of November, 1911, in a suit pending in said Court, wherein they are appellants and the United States of America is appellee; and

Whereas, said appellants are desirous of superseding and staying execution of said decree,

Now therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

THE NORTHERN PACIFIC RAILWAY COMPANY,

THE MERCANTILE TRUST COMPANY,

HENRY YEACKEL AND

FLORA YEACKEL, *His Wife*;

WILBUR S. BADLEY AND

FLORENCE C. BADLEY, *His Wife*;

C. D. WISE AND

— WISE, *His Wife*;

R. D. McCULLY,

By C. W. BUNN AND

CHARLES DONNELLY,

Their Solicitors.

NATIONAL SURETY COMPANY,

[SEAL.]

By C. M. BEND, *Its Attorney in Fact.*

41 STATE OF MINNESOTA,
 County of Ramsey, ss:

On this 13th day of November, 1911, before me personally appeared C. M. Bend Attorney in Fact of the National Surety Company, with whom I am personally acquainted, who being by me duly sworn said that he is the Attorney in Fact of said corporation, the National Surety Company; that he knows the corporate seal of said company; that it was affixed to the foregoing instrument by order of the Board of Directors of said company, and that he signed said instrument as Attorney in Fact of said corporation by authority of said Board of Directors, and he acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.]

DAN I. YORK,
Notary Public, Ramsey County, Minnesota.

My commission expires August 25th, 1915.

Approved this 20th day of November, 1911, as a supersedeas.

WM. B. GILBERT,
Presiding Judge of the United States Circuit
Court of Appeals for the Ninth District.

(Endorsed:) Bond on Appeal and Order Approving Same. Filed
Nov. 22, 1911. F. D. Monckton, Clerk.

42 United States Circuit Court of Appeals for the Ninth Circuit
 No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE
Trust Company, Henry Yeackel and Flora Yeackel, His Wife;
Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise
and — Wise, His Wife, and R. D. McCully, Appellants,

VS.

THE UNITED STATES OF AMERICA, Appellee.

Order Directing Transmission of Original Exhibits.

It being proper in the opinion of the undersigned, Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit, that the original exhibits named below and which were introduced in evidence in said cause in the Circuit Court and by order of that Court transmitted to the Clerk of this Court, should be transmitted to the Clerk of the Supreme Court of the United States so that the same may be available for inspection in said court.

It is hereby ordered that the Clerk of this Court be and he is hereby directed to send to the Clerk of the Supreme Court of the United States under his certificate that the same are originals, the following original exhibits:

- 43
1. Plaintiff's Exhibit Number 1.
 2. Plaintiff's Exhibit Number 2.
 3. Plaintiff's Exhibit Number 3.
 4. Plaintiff's Exhibit Number 4.
 5. Plaintiff's Exhibit Number 5.
 6. Plaintiff's Exhibit Number 6.
 7. Plaintiff's Exhibit Number 7.
 8. Plaintiff's Exhibit Number 8.
 9. Plaintiff's Exhibit Number 9.
 10. Plaintiff's Exhibit Number 10.
 11. Defendant's Exhibit "A".
 12. Defendant's Exhibit "B".
 13. Defendant's Exhibit "C".
 14. Defendant's Exhibit "D".
 15. Defendant's Exhibit "E".
 16. Defendant's Exhibit "F".
 17. Defendant's Exhibit "G".
 18. Defendant's Exhibit "H".
 19. Defendant's Exhibit "I".
 20. Defendant's Exhibit "K".
 21. Defendant's Exhibit "L".

WM. B. GILBERT.

*Presiding Judge of the United States Circuit
Court of Appeals for the Ninth Circuit.*

Dated November 20th, 1911.

(Endorsed:) Order Directing Transmission of Original Exhibits to Supreme Court U. S. Filed Nov. 22, 1911. F. D. Monckton, Clerk.

44 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings and Transcript of Record Upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-three (43) pages, numbered from and including one (1) to and including forty-three (43) to be a true copy of the Assign-

ment of Errors and of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the Opinion filed therein, as the same remain of record in my office, and that the same in connection with the preceding certified copy of the printed Transcript of Record and together with the accompanying, separately certified, original exhibits, viz:

Plaintiff's Original Exhibits Nos. 1, 2, 3, 4, 5,

6, ("White Swan Map"—Small Blue Print,)

6, ("Map of Indian Nations and Tribes of Washington and Nebraska"—Large Blue Print,)

8, 9, and 10; and

Defendant's Original Exhibits: A, B, C, D, E, F, G, H, I, and K and L,

constitute a true copy of the complete record, including all of said original exhibits, in the above-entitled case, and the transcript of record therein upon appeal to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this thirteenth day of December, A. D. 1911.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

46 United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, in the City of Washington, in the District of Columbia, within sixty (60) days after the date of this citation pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the Northern Pacific Railway Company, the Mercantile Trust Company, Henry Yeackel and Flora Yeackel, His Wife, Wilbur S. Badley and Florence C. Badley, His Wife, C. D. Wise and — Wise, His Wife, and R. D. McCully are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William B. Gilbert, Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 20th day of November, A. D. 1911.

WM. B. GILBERT,

*Presiding Judge of the United States Circuit
Court of Appeals for the Ninth Circuit.*

Due service of the foregoing citation on appeal and receipt of a copy thereof hereby acknowledged this 21 day of November, 1911.

OSCAR CAIN,
U. S. Attorney.

47 [Endorsed:] Form 3199 3-20-11 500 RP Original. Docketed. No. 1916. U. S. Circuit Court of Appeals, Ninth Circuit. Northern Pacific Railway Co. et al., vs. The United States of America, Defendant. Citation. C. W. Bunn and Charles Donnelly, Attorneys for Pl't'ff, N. P. Ry. Co., St. Paul, Minnesota. Due service of this instrument and receipt of copy thereof admitted this 28th day of November, 1911. F. W. Lehmann, Solicitor General, H. Filed Dec. 5, 1911. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Endorsed on cover: File No. 22,987. U. S. Circuit Court Appeals, 9th Circuit. Term No. 911. The Northern Pacific Railway Company, The Mercantile Trust Company, Henry Yeackel et al., appellants, vs. The United States of America. Filed December 28, 1911. File No. 22,987.

IN THE
Supreme Court of the United States

NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE TRUST COMPANY, HENRY YEACKEL, and FLORA YEACKEL, His Wife, WILBUR S. BADLEY and FLORENCE BADLEY, His Wife, C. D. WISE and ——— WISE, His Wife, and R. D. McCULLY.

Appellants,

vs.

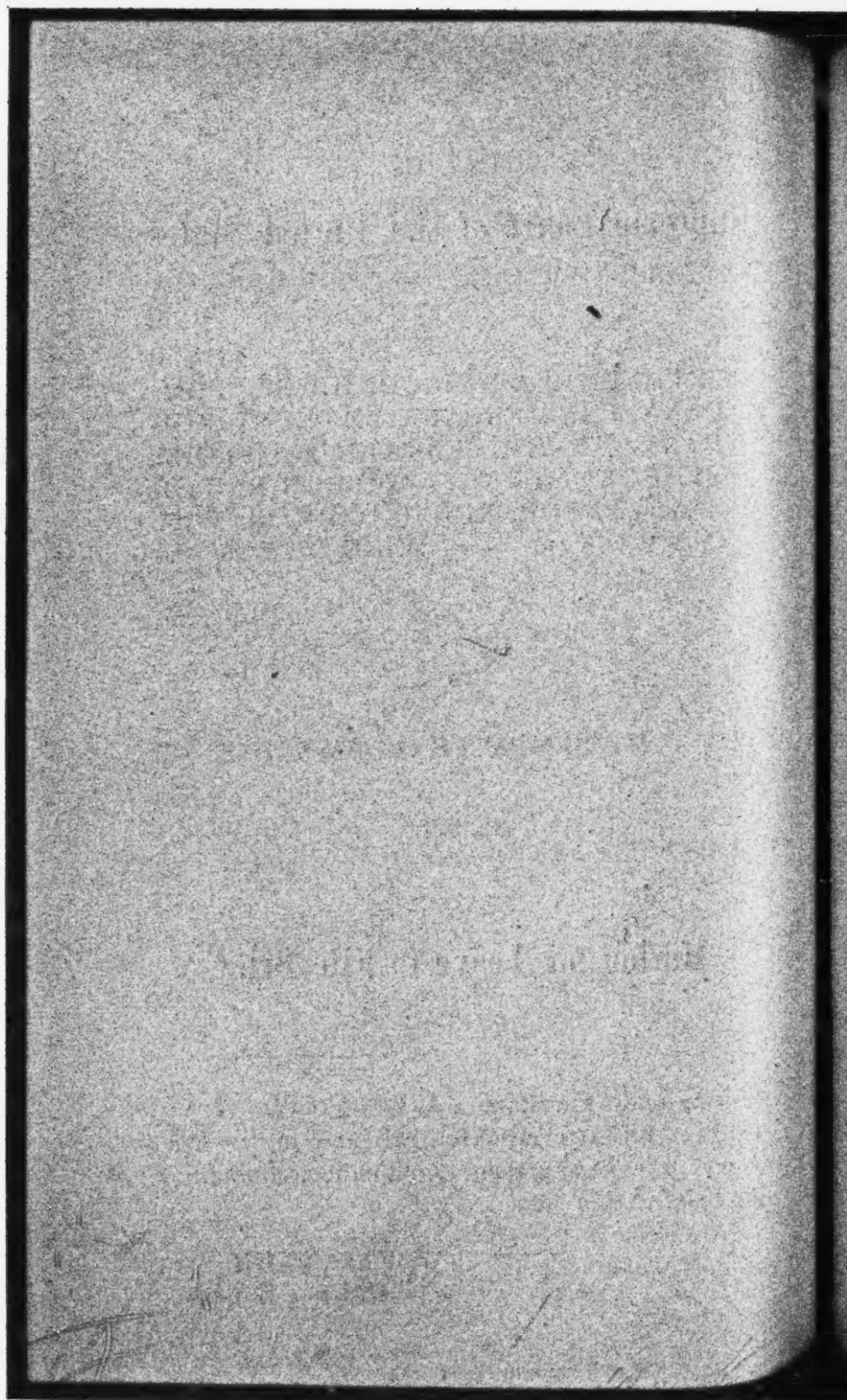
THE UNITED STATES OF AMERICA.

No. 911.

Motion for Leave to File Brief

Comes now the State of Washington by W. V. Tanner, its Attorney General, and moves the court for leave to present and file the accompanying brief in this cause.

W. V. TANNER,
Attorney General.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1911.

NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE TRUST COMPANY, HENRY YEACKEL, and FLORA YEACKEL, His Wife, WILBUR S. BADLEY and FLORENCE BADLEY, His Wife, C. D. WISE and ——— WISE, His Wife, and R. D. McCULLY.

Appellants,

vs.

THE UNITED STATES OF AMERICA.

No. 911.

Brief of the State of Washington

STATEMENT OF FACTS.

The statement of facts found in appellants' brief presents very fully the material facts in this controversy. We shall, therefore, confine

our statement to an exposition of the state's interest in this litigation, and the facts material thereto.

The Yakima Indian Reservation was established by treaty between the United States government and the Yakima and fourteen other tribes of Indians on June 9, 1855. (12 Stat. at L. 951). By this treaty a certain tract of land was reserved and set apart for the exclusive use of the Indians. The State of Washington was admitted into the Union on November 11, 1889, under the provisions of the enabling act of February 22, 1889 (25 Stat. L. 676). That act made a present grant to the State of Washington of sections 16 and 36 in every township within the boundaries of the state, to take effect upon its admission into the Union (Secs. 10 and 11). These sections were granted to the state for the use and benefit of the common schools, and provision was made for the selection of indemnity lands by the state for loss occasioned by reason of such section being so encumbered at the time of the admission of the state that title thereto could not be conveyed.

The south and west boundaries of the Yakima Indian Reservation were surveyed in 1890, and marked by monuments as provided in the contract of survey (Ex. A. Rec. p. 325, and Rec. pp.

336-465). The government thereafter proceeded to survey a large tract of land lying between the west boundary of the reservation and what is now known as the main ridge of the Cascade Mountains, aggregating approximately 293,837 acres (Barnard map Rec. p. 579). The State of Washington by virtue of the grant of the enabling act, above referred to, upon the survey of such lands, was found to be the owner of 11,000 acres thereof, the same being sections 16 and 36 in place. The state also selected from the tract so surveyed and open to settlement some 23,000 acres, for which it offered true and approved base in accordance with the indemnity provisions of the enabling act. Some few years after the survey of such lands the question was raised as to whether the survey of 1890 constituted the true boundary of the reservation (Rec. p. 133); and a resurvey was made by one E. C. Barnard under the direction of the Secretary of the Interior. His survey and report were to the effect that the boundaries as described in the treaty extended further west and that the reservation included the entire tract of 293,837 acres (Pltf's Ex. 3, Rec. pp. 109, 142). This survey was thereafter approved and adopted by an act of Congress as the true boundary of the reservation (Act of Congress approved Dec. 21, 1904; 33 Stat. L. 595).

The Secretary of the Interior then refused to approve the selections of the State of Washington, and refused to permit the state to take possession of its sections 16 and 36 in place within the territory above mentioned. The act of Congress adopting the Barnard Survey as the true boundary of the reservation, contained the following provision, "that where valid rights have been acquired prior to March 5, 1904, to lands within said tract by bona fide settlers or purchasers under the public land laws, such rights shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit, and in the construction of irrigation works on the Yakima Indian Reservation." The Interior Department, however, held that the state did not come within the exceptions set forth in this proviso, and held that the state would not be injured by such extension of the reservation as it was entitled to select indemnity lands for the amount of lands in place and those selected, within the territory included within the extended limits of the Reservation.

The right of the state to select indemnity lands for its losses as provided in the enabling act, is one that cannot be exercised, owing to the fact that there are no lands subject to selection of the

value of ten dollars per acre, the minimum price for which such lands may be sold under the limitation found in that act. Section 11 of the act of Congress of February 22, 1889 (25 Stat. L. 676). This condition is brought about by reason of the fact that approximately one-third of the State of Washington is included within the forest reserves established by the federal government, the existence of which we assume this court will take judicial notice.

ARGUMENT.

From the foregoing statement of fact, we think it is apparent that the state is vitally interested in the outcome of this litigation.

The appellants in this court have filed a very able and extensive brief, which we think fully considers all of the different points in the case.

We do not believe that a brief on the part of the state discussing the different questions raised by counsel for the appellants, would do more than impose upon the court an unnecessary labor, and would not serve to enlighten the court as to any of the material questions which the appeal presents for its consideration. We shall, therefore, rest our interest in this proceeding principally upon an endorsement of the brief of appellants.

There is, however, one feature of this case which, although considered in the brief of the appellants indirectly, is not emphasized as fully as its importance would seem to demand.

In the interpretation of a treaty, especially of this character, one of the most important matters for consideration is its object and purpose. By this we mean a study of the existing conditions at the time it was negotiated which were responsible for its execution. An understanding of the

conditions existing in the territory of Washington at the time the treaty of June 9, 1855, was signed, will serve to assist in determining what the intention of the parties was and to explain some of the doubtful provisions.

In the report of Gen. Isaac I. Stevens, who was Superintendent of Indian Affairs in the Washington territory, to the Secretary of the Interior, incorporated by the Secretary of the Interior in his report (Senate Documents, second session, 33d Congress, Vol. 1, 1854-55, p. 45) will be found a statement of the so-called "Indian policy," or the policy of the officers in charge of Indian affairs in Washington Territory insofar as their relationship with the Indians was concerned. He there states (p. 455):

"It is obviously necessary that a few reservations of good lands should be set apart as permanent abodes for the tribes. These reservations should be large enough to give each Indian a homestead, and land sufficient to pasture their animals, of which land they should have the exclusive occupation. The location and extent of these reservations should be adapted to the peculiar wants and habits of the different tribes."

Further on in his report he states (p. 456):

"In making the reservations it seems desirable to adopt a policy of uniting small bands under a single head. The Indians are never so disposed to mischief as when scattered, and therefore beyond control."

This announcement of the Indian policy by the Interior Department discloses what the government officials desired to accomplish by the creation of the different Indian reservations. They considered the natural location and boundaries of such a reservation as of paramount importance. It is a fact now of history that at the time of the Walla Walla Council at which the Yakima treaty was signed, the Indians throughout the northwest had been in a state of disaffection. Settlers emigrating from the East were undergoing unbearable hardships from the Indian uprisings, and as the country surrounding the Yakima Reservation was of such a character that it would naturally appeal to the settlers and the miners seeking homes in the Northwest, there was an urgent necessity for a more rigid supervision and control of the Indians and in particular the Yakima Indians. The government officers with this in mind, in the location of all of the reservations, sought to have them surrounded by natural boundaries, in order to prevent the unavoidable conflicts which were sure to arise from the intermingling of the Indians and the settlers.

In a speech delivered in Congress by the Hon. J. P. Anderson of Washington Territory on August 6, 1857, 34 Appendix to Congressional Globe, at page 1189, will be found a most urgent

plea to the Congress for the protection of the settlers in the Northwest from the Indians. In this speech he reviews the conditions as they existed, and describes the Northwest Indian in the following language:

"I could show that, so far from their 'never forgetting a kindness' their whole character is composed of a subtle bond of cruelty, vindictiveness, treachery and ingratitude."

With such conditions existing, and Indians of such a character to deal with, it is easy to understand that the principal object to be attained by the establishment of the Indian reserves was for the protection of the settlers of the Northwest; and with this in mind, it is most reasonable to assume that the government would insist upon the Indians accepting a reservation, the natural boundaries of which would, to a great extent, prevent their molesting the white settlers in their neighborhood, as well as prevent the more unscrupulous whites from imposing on the ignorant Indians.

In the report of General Palmer, Superintendent of Indian Affairs, of date October 9, 1855, (quoted in 34 Appendix to Congressional Globe, page 1190) is found the following statement relative to the Yakima treaty:

"It is pretty evident that the signing of the treaty was adverse to the will of the nation

as expressed prior to the delegations going to the council, and that on the return of the chiefs they were beset of their people and denounced as traitors to their tribes."

This is but an evidence of the fact that the government in the negotiation of this treaty had succeeded in confining the Indians within boundaries which were not acceptable to them.

We appreciate the fact that the foregoing quotations are not matters of record in this case, but inasmuch as they are a part of a public record compiled under the direction of Congress, we believe that it is proper to refer to them for the purpose of ascertaining the conditions existing in the Northwest at the time the treaty was signed, for the purpose of ascertaining the intention of the parties, as well as the objects and purposes to be accomplished by the execution of the treaty. Historic facts incident to the negotiation of a treaty we believe are proper matters for the consideration of the court in the same manner that the history of legislation is considered in ascertaining the intent of the enacting body.

Standard Oil Co. of New Jersey, et al. v. United States, 221 U. S. 1, 55 L. Ed. 609.

There can be no question but what the Swartz survey of 1890 of the south and west boundaries of the reservations, the one contended for by appellants, follows the natural boundaries of the reservation. The western boundary as so sur-

vayed follows down the ridge in which the Ahtanum River rises, which is as high in many places as what is today known as the main ridge of the mountains. (Barnard's map Pltf's Ex. No. 3, Rec. p. 579). For this reason we submit that the main ridge referred to in the treaty is the ridge reached by following the description of the boundaries found in the treaty. The western boundary in following such ridge constitutes a natural barrier, which to a great extent served to prevent the Yakima Indians from invading the lands to the west of the reservation. If it was not intended to have the western boundary extend down this ridge of mountains, then the policy of "uniting" the Indians and preventing them from "scattering" and thus getting *beyond the control of the government*, would have been ignored. We submit such was not the intention of the department.

We think that a consideration of appellants' brief in this case, in view of the conditions existing in the Northwest at the time the treaty was signed conclusively show that it was intended to have the western boundary conform to the survey established by J. A. Swartz in 1890. Such being the case, the appellants and the State of Washington are entitled to the land claimed by them within the disputed territory.

ACT OF CONGRESS, DECEMBER 21, 1904.

The act of Congress passed December 21, 1904 (33, St. at L. 595), establishing the present boundary of the reservation could in no way affect the rights of the state or the appellants in this action. If such act is intended to construe the terms of the treaty, then it is void as Congress is not given the power or authority to construe treaties, and if it is to be construed simply as a legislative act setting aside a portion of the public domain as an addition to the reservation it cannot be construed as affecting the vested rights of the state or appellants. The position the state assumes, without waiving its objections to said act of Congress as set forth above, is that the exception which is found in the law (Record p. 512) reading as follows:

"Provided, further, that where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by bona fide settlers or purchasers under the public land laws, such rights shall not be abridged."

saves to the state the rights it had in the granted sections in place.

We submit that the State of Washington is "a purchaser under the public land laws" insofar as sections 16 and 36 are concerned. The people of the territory of Washington had an interest in

all the lands of the territory. Under the enabling act the federal government made certain specific grants to the state, and in consideration therefor the people of the state by article 26 of the state constitution, which is as follows:

"We, the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of the state."

disclaimed all right and title to the unappropriated public lands within the state. The enabling act, together with the constitution and proclamation of the President admitting the state, formed a compact between the government and the state, and although the people of the state did not purchase these lands for a money consideration, their disclaimer of all their right and title to the unappropriated public lands within the territory was a valuable consideration such as would make them *purchasers* of the lands granted under the enabling act within the meaning of the act of Congress, Dec. 21, 1904.

We therefore respectfully submit that the decree of the court below should be reversed, with directions to the trial court to dismiss the bill.

W. V. TANNER,
Attorney General.

R. E. CAMPBELL,
Assistant Attorney General.

[illegible]

[Faint, illegible handwriting]

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a copy of the original letter, and is signed by the President.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

THE UNIVERSITY OF CHICAGO

3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 500.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE TRUST COMPANY, HENRY YEACHEL and FLORA YEACHEL, his wife, WILBUR S. BRADLEY and FLORENCE BRADLEY, his wife, C. D. WISE and ——— WISE, his wife, and R. D. McCULLY,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

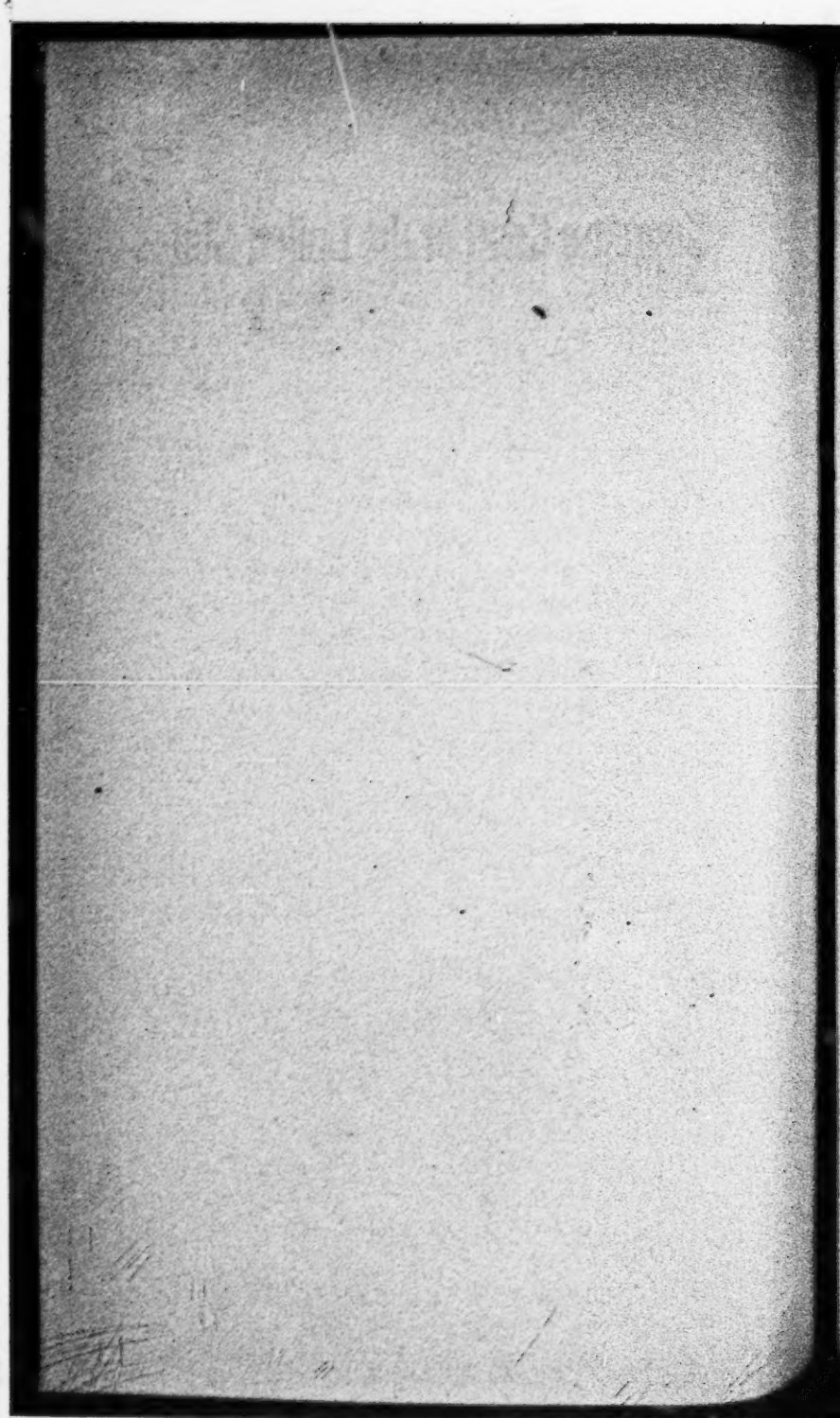
MOTION TO ADVANCE.

CHARLES W. BUNN,
Counsel for Appellants.

U. S. Supreme Court, D. C.
FILED.

OCT 5 1912

JAMES H. McKENNEY,
CLERK.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1912.

No. 500.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE TRUST COMPANY, HENRY YEACHEL and FLORA YEACHEL, his wife, WILBUR S. BRADLEY and FLORENCE BRADLEY, his wife, C. D. WISE and ——— WISE, his wife, and R. D. McCULLY,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

MOTION TO ADVANCE.

The appellants respectfully move the Court to advance this cause for early hearing.

This appeal is from a judgment of the United States Circuit Court of Appeals for the Ninth Circuit sustaining a judgment of the Circuit Court of the United States for the Eastern District of Washington, adjudging void some fifty-five patents for lands issued to the Northern Pacific Railroad Company by virtue of the Act of July 2, 1864 (13 Stats., 365).

Whilst this suit involves patents for a lesser acreage, the decision of the Court will determine the title to approximately 160,975 acres.

The bill of the United States proceeds upon the theory that the patents issued to the Railroad Company upon the erroneous supposition that the railroad grant attached to the patented lands; whereas it is alleged that the lands fell in fact within the boundaries of the Yakima Indian Reservation and therefore were excepted from the railroad grant.

The main and probably the controlling question in the case is one of disputed boundary of the Indian Reservation turning on the proper interpretation of the treaty of June 9, 1855, with the Yakima Indians (12 Stats., 951). While the record contains verbal testimony, that testimony is pertinent only to throw light on the interpretation of the boundary calls in the treaty.

There are approximately one hundred and five settlers upon the disputed lands, claiming against the railroad title about 13,000 acres. The State of Washington claims some 23,000 acres in Sections 16 and 36, falling within the area which the United States contends is within the Indian reservation.

The Act of March 3, 1887, directed the Secretary of the Interior to proceed with the immediate adjustment of railroad grants, and although the grant to aid in the construction of the Northern Pacific road

was made in 1864, it is yet unadjusted to a large extent. The issues involved in the pending cause are among those standing in the way of such an adjustment.

The Secretary of the Interior has practically suspended action upon the claims of settlers, claims of the State of Washington, and the right of the Indians to allotment, and other disposition of these lands pending final decision of this Court, and under date of September 14, 1912, he advised the Attorney General that there were within the alleged limits of the reservation a large number of settlement claims in conflict with the railroad grant, which claims have been suspended for more than five years awaiting final determination of this suit. He further stated that a considerable portion of the lands were involved in claim of the State of Washington, and that the Indian Office desired to complete the allotment to the Indians, concluding with the statement:

"It is therefore important that the question involved should be settled as early as possible, and this department joins in the request of the Railroad company that the case be advanced by the Court."

Under date of September 5, 1912, the Solicitor General indicated his willingness to concur in this motion to advance.

In view, therefore, of the large area of land involved, and of the numerous conflicting claims to the same held in abeyance until the determination of this

cause, it is respectfully submitted that the case should be advanced to be heard as soon as practicable.

Respectfully submitted,

CHARLES W. BUNN,
Counsel for Appellants.

Service of a copy of the above motion is acknowledged.

Solicitor General.

¹⁴
No. 500.

Supreme Court of the United States

OCTOBER TERM, ¹⁹¹²~~1911~~

DEC 3 1912

JAMES H. McKEE

THE NORTHERN PACIFIC RAILWAY COMPANY
THE MERCANTILE TRUST COMPANY, HENRY
YEACKEL and FLORA YEACKEL, His Wife, WIL-
BUR S. BADLEY and FLORENCE BADLEY, His
Wife, C. D. WISE and ——— WISE, His Wife, and
R. D. McCULLY,

Appellants.

vs.

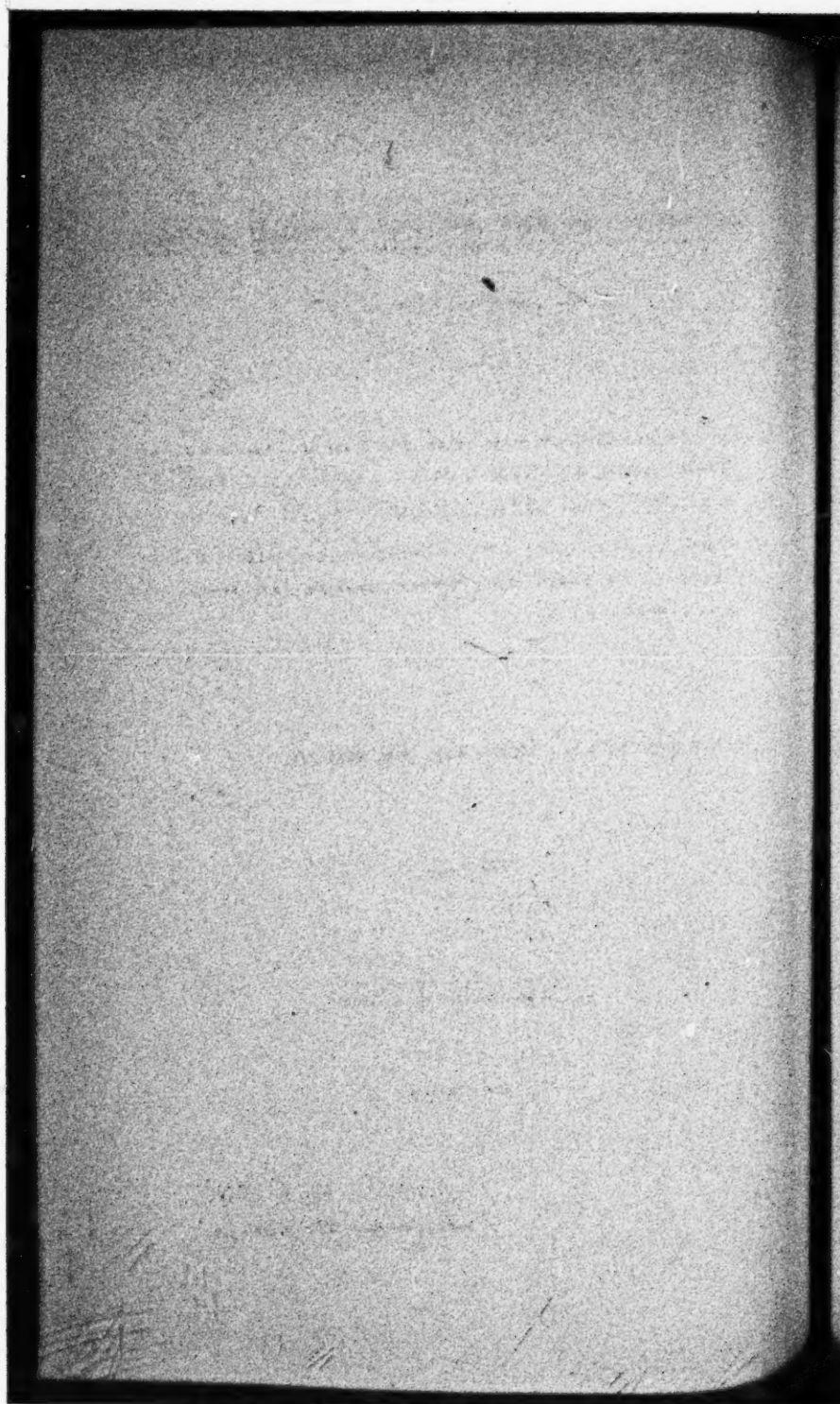
THE UNITED STATES OF AMERICA,

Appellee.

No. ⁵⁰⁰~~922~~

APPELLANTS' BRIEF.

CHARLES W. BUNN,
CHARLES DONNELLY.



Supreme Court of the United States

THE NORTHERN PACIFIC RAILWAY COMPANY,
THE MERCANTILE TRUST COMPANY, HENRY
YEACKEL and FLORA YEACKEL, His Wife, WIL-
BUR S. BADLEY and FLORENCE BADLEY, His
Wife, C. D. WISE and ——— WISE, His Wife, and
R. D. McCULLY,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF FACTS.

This is an appeal from a decree of the Circuit Court of Appeals for the Ninth Circuit, affirming a decree of the United States Circuit Court for the Eastern District of Washington, in a suit in equity brought to cancel patents to certain lands in the State of Washington. These patents were issued, some to the Northern Pacific Railway Company, and some to its predecessor the Northern Pacific Railroad Company, in 1895, 1896 and 1904, and when this suit was brought in January, 1907, some of the lands covered by them had been sold to the individual defendants. The decree directs the cancellation of the patents and adjudges that the titles of the railway company, and of its mortgagee the Mercantile Trust Company, and of the individual defendants, are void.

The facts are as follows: On June 9, 1855, a treaty was concluded between the United States and fourteen confederated tribes and bands of Indians known as the Yakima Indians, by which the Indians ceded to the United States a large territory, reserving out of it, however, for their "use and occupation" a tract of land described as follows:

"Commencing on the Yakima River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakima, eight miles below the mouth of the Satass River; and thence up the Yakima River to the place of beginning."

All of the foregoing tract, the treaty said, should be "set apart and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes and bands of Indians as an Indian Reservation." The treaty was ratified March 8, and proclaimed April 18, 1859 (12 Stat. at L. 951). On April 30, 1857, Governor Stevens, who had concluded the treaty, forwarded to the Commissioner of Indian Affairs at Washington a "map of the Indian Nations and tribes of the territory of Washington and of the territory of Nebraska west of the mouth of the Yellowstone." (Complainant's Ex. 6 and 7, record p. 316, 583.) Upon this map is shown a tracing of the Yakima Indian Reservation. Another original map, known as the "White Swan Map" and bearing the inscription "I. I. Stevens Map, March 1857," appears to have been deposited

at the Yakima Agency about the same time, having been given by Governor Stevens to an Indian named White Swan (Record pp. 133, 136). This map shows the boundaries of the Yakima Reservation only, and is a reproduction of the tracing of that reservation as it is shown on the larger map (Ex. 6, record p. 583) transmitted to Washington by Governor Stevens April 30, 1857. A copy of the White Swan Map appears at page 576, and another at page 584 of the record.

In 1861, the Superintendent of Indian Affairs for Washington Territory directed Messrs. Berry and Lodge, surveyors, to make a survey of the *Southern* boundary of the reservation (Plffs. Ex. 8, record p. 318). Such a survey was made in that year and a map of it (Plff's. Ex. 4, record p. 580) was filed in the office of the Commissioner of Indian Affairs.

July 2, 1864, Congress passed an act (13 Stat. at L. 365) incorporating the Northern Pacific Railroad Company. By the third section of the Act a grant of lands was made to that company in the following terms:

"That there be, and hereby is, granted to the 'Northern Pacific Railroad Company,' its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from

pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the commissioner of the general land-office; and whenever, prior to said time [of definite location], any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

The map of definite location of the railroad opposite the lands in question was filed June 25, 1883, and approved June 28, 1883, and the railroad was duly constructed. (Record p. 172.) All of these lands were within the primary limits or the indemnity limits of the grant, and the defendants (appellants here) are entitled to them unless they were included within the boundaries of the Yakima reservation as above described, and reserved by the treaty of 1855.

In 1886, the southern boundary of the reservation for a distance of forty-seven and one-half miles from the Yakima River appears to have been surveyed by one Harry J. Clark; but the work was poorly done and all evidences of it were soon lost (record pp. 479-480); and in 1889 the agent at the Yakima Agency wrote to the Commissioner of Indian Affairs urging that a re-survey of the southern boundary and *an original survey* of the western boundary of the reservation be made. The western boundary, he said, ran "along the main ridge of the Cascade Mountains south and east of Mount Adams;" and he said it was a subject of disagreement as to which was the "main ridge" there referred to, the Indians claiming that the main ridge extended to the base of Mount Adams on the south and east.

while white men with diverse interests claimed that it was farther east. All of the country south and east of Mount Adams for forty or fifty miles was regarded, he said, as part of the Cascade range, being wholly mountainous, and therefore, because of this uncertainty, he thought a survey necessary (Defts. Ex. "F," p. 483).

As a result of this letter, and with a view to settling the questions suggested in it, the Department, in 1890, closed a contract with George A. Schwartz, United States Deputy Surveyor, for a "re-survey and survey of the south and west boundary of the Yakima Indian Reservation" (Ex. "A," p. 325); and in September, October and November of that year the survey was completed by him. (See field notes of survey, Record pp. 336-465). In July, 1891, the survey thus made was examined by Jacob E. Noel, acting under instructions from the United States Surveyor General for the State of Washington. He reported that great care had been taken by Deputy Surveyor Schwartz in establishing the lines, and that the work had been carefully and skilfully done (Defts. Ex. "H," p. 490-495). On receipt of the returns of the survey, together with Mr. Noel's report thereon, it was accepted by the Commissioner of the General Land Office October 21, 1891 (Defts. Ex. "I," record p. 496), and thereafter was treated by the Land Department as correctly describing the boundaries of the reservation.

In 1895 and 1896, patents were issued to the Northern Pacific Railroad Company for most of the lands involved in this suit. (See list at end of complaint, record pp. 11-14.) In the latter year, the Northern Pacific Railway Company, a corporation organized under the laws of Wisconsin, purchased at foreclosure sale the patented lands of the Railroad Company, and the rights of that company to receive lands

not yet patented. (Record pp. 305-308.) The remaining patents were issued directly to the Railway Company in 1904, pursuant to the rights thus acquired at the foreclosure sale.

In 1898 question was again raised as to what were the true boundaries of the reservation and as to whether the Schwartz survey had correctly defined them (Rec. p. 133); and in 1899, E. C. Barnard, then a topographer of the geological survey, acting under the direction of the Secretary of the Interior, visited the reservation and, after examination, submitted, on January 12, 1900, a report and map marking out the boundaries of the reservation, as he conceived they ought to be marked out. (Pliff's Ex. 3, record pp. 109, 142.) The maps attached to this report were the old White Swan Map referred to above, which appears at p. 576 and again at p. 584 of the record; and a map made by Barnard himself, in which the boundaries of the reservation as defined by Schwartz in 1890, and as Barnard thought they *ought* to be defined, are shown. This latter map appears as a part of Barnard's report at p. 578 of the record, and again on an enlarged scale at p. 571.

On April 20, 1900, the Secretary of the Interior transmitted Barnard's report to the Speaker of the House of Representatives with a draft of a bill granting authority for the detail of an Indian Inspector to negotiate an agreement with the Indians for an adjustment of their claim to the lands lying without the Schwartz but within the Barnard line of the reservation (Record p. 109); and subsequently Congress passed an act, approved Dec. 21, 1904, (33 Stat. at L. 595) section 1 of which reads as follows:

"That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands embraced in the Yakima Indian Reservation proper, in the state

of Washington, set aside and established by treaty with the Yakima Nation of Indians, dated June eighth, eighteen hundred and fifty-five: PROVIDED, That the claim of said Indians to the tract of land adjoining their present reservation on the west, excluded by erroneous boundary survey and containing approximately two hundred and ninety-three thousand eight hundred and thirty-seven acres, according to the findings, after examination of Mr. E. C. Barnard, topographer of the Geological Survey, approved by the Secretary of the Interior April seventh, nineteen hundred, is hereby recognized, and the said tract shall be regarded as a part of the Yakima Indian Reservation for the purposes of this Act: PROVIDED FURTHER, That where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by bona fide settlers or purchasers under the public land laws, such rights shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit and in the construction of irrigation works on the Yakima Indian Reservation."

The lands here in question lie without the lines of the reservation as surveyed by Schwartz, but within those lines as marked out by Barnard. After the passage of the Act of December 21, 1904, the Government demanded of the Railway company that it re-convey them, and a re-conveyance being refused this suit was begun, resulting, as already stated, in a decree (record p. 533) directing cancellation of the patents. This decree the court below affirmed.

SPECIFICATION OF ERRORS.

I.

The court erred in holding that the Schwartz survey did not correctly describe the boundaries of the reservation.

II.

The court erred in holding that the presumptions in favor of the Schwartz survey were not controlling.

III.

The court erred in holding that defendants were not entitled to the lands in question as bona fide purchasers thereof.

IV.

The court erred in not holding that this suit is barred by the Statute of Limitations as to lands patented in 1895 and 1896.

V.

The court erred in affirming the decree of the Circuit Court.

ARGUMENT.

1. The Schwartz survey of 1890 correctly defines the boundaries of the reservation.

So that our argument in support of this proposition may be more easily followed, we reproduce in an appendix to this brief a copy of each of the following maps:

1. The map made by Barnard after his visit to the reservation in 1899. (Plff's Ex. 3, record pp. 80, 578.)
2. The so-called "White Swan" map (Plff's Ex. 3, record pp. 129, 577.)
3. Tracing of the Yakima Reservation and adjacent lands as shown on the Land Department map of 1891. (Deft's Ex. "D," p. 588.)

If, with the calls of the treaty before it, the court will turn to the first of these maps, namely the map accompanying Barnard's report of January 12, 1900, the exact nature of the fact dispute will be at once apparent.

The calls of the treaty "commence on the Yakima River at the mouth of the Atanum River." No dispute exists as to the location of this point.

"Thence westerly along said Atanum River to the forks." There is no dispute as to this call.

"Thence along the southern tributary to the Cascade Mountains." There is no dispute as to what is the southern tributary, nor is it disputed that this tributary may be followed to the Cascade Mountains. But when we have followed it to its very source in those mountains, we are still a considerable distance east of what is now described by all of the witnesses as the "main ridge"; and the next call is "thence southerly along the main ridge of said mountains, passing south and east of Mount Adams to the spur whence flows the waters of the Klickitat and Pisco rivers."

Here, then, is where the difficulty begins; and Barnard, when he visited the reservation in 1899, felt this difficulty. Assuming it to be necessary that the northern boundary should extend west to what is now known as the absolute main ridge of the Cascades, and realizing that the south fork of the Atanum stopped in a ridge of those mountains several miles east of this absolute main ridge, he concluded that it was utterly impossible to make the wording of the treaty agree with the topography of the country. We quote from his report (Record p. 129), and from his testimony, which consists simply of his report read into the record (Record p. 84):

"Standing on Signal Peak and reading from the treaty, or with the map before us, *there is no possible way of making the wording of the treaty agree with the topography of the country.*"

But from what was told him by two Indians, Chief Spencer and Stick Joe, he concluded that it was "possible to determine quite accurately what the *intention* of the treaty was." (Record p. 129.) "From the imperfect topographic knowledge of the country when the treaty was closed," he says, "it was believed that both the Atanum and Pisco rivers reached to the summit of the Cascade Mountains," (that is, to the summit of what is *now* known as the *main ridge* of the Cascade Mountains) "but such is not the case, although from a distance it would be a fair presumption." Reasoning from this premise and believing that the northern boundary *must* extend to what is now known as the main ridge of the Cascades, he accepted Chief Spencer's statement as to what the boundaries were. We again quote from his report (Record p. 126):

"Chief Spencer, on being asked to tell what he knew of the boundary line of the reserve said that Governor

Geary, who succeeded Governor Stevens, described the limits of the reserve to him as follows:

Up the Atanum River from its mouth to the mouth of the South Fork; thence up the South Fork to the head; thence directly west across the Little Klickitat to a high point just this side of Goat Rocks; thence to a conical hump on the southeast slope of Mount Adams."

Accepting this statement, he traced on his map the lines thus indicated, namely, from the head of the south fork "directly west across the Little Klickitat to a high point just this side of Goat Rocks" which Barnard calls Spencer's Point; thence in a direct line to the Hump on the southeast slope of Mount Adams; thence in a direct line southeast to Grayback Peak; and thence along a ridge to mile post 51, where dispute as to the boundary ceases. These lines enclose 293,837 acres lying outside the boundary of the Schwartz survey. Barnard also suggested and showed on his map an *alternative* line from the head of the south fork northwesterly, following the range of mountains in which the south fork takes its rise to the main ridge of the Cascades; thence southerly along the main ridge swinging around the eastern slope to reach the Hump. If this alternative line were to be adopted as describing the reservation, it would enclose a tract of 357,878 acres outside the boundaries of the Schwartz survey. As Congress, by the Act of December 21, 1904 (33 Stat. at L. 596), recognized the claim of the Indians to only 293,837 acres, i. e. to the tract within the lines first above described, these latter lines, being those indicated by Chief Spencer as above, have been assumed by the government to correctly describe the boundaries of the reservation.

The trial court, in reaching its conclusion, was moved by the same considerations that moved Barnard. It says

that "the difficulty in correctly locating the boundaries of the reservation arises from a want of conformity of the description contained in the treaty with the topography of the country" (Record p. 519). It is true, the court says, "that the southern tributary of the Atanum *does* reach a spur of the Cascade Mountains and in that respect it may be said that it reaches those mountains." But the next call is "southerly along the main ridge of said mountains"; the court understands this to mean the *absolute* main ridge as *now* known and says, "the line could not pass southerly along that ridge unless it should first be reached." The necessity of following the main ridge "to my mind is altogether controlling" (Record p. 522). The court admits that the call "along the south fork of the Atanum" does not require the following of that fork *to the main ridge* of the Cascade Mountains, but only "to the Cascade Mountains" but, it says, "the description can be harmonized by concluding that it was *meant* by 'to the Cascade Mountains' to designate the main ridge" (Record p. 520). Considering the necessity of following the main ridge to be controlling the trial court agrees with Barnard that the lands in question were within the reservation, rejects the Schwartz survey, and directs the cancellation of the patents based upon it.

Now, before proceeding to consider what can be said in favor of the Schwartz survey, which is thus overthrown, we ask the court to observe these three things:

First. That the survey which displaces it is purely arbitrary. The trial court says so (Record p. 532), and a single glance at the map shows it to be so. The lines which Barnard suggests do not profess to follow the treaty calls from the head of the south fork west; and this is so, whether we take for the northern boundary the straight line west from the head of the south fork to Spencer Point,

or the irregular line north of it, suggested by Barnard as an alternative, and following the range of mountains northwesterly to what is now known as the main ridge of the Cascades. Nothing in the treaty justifies or calls for either of these lines. The straight line Barnard suggests as answering to *Chief Spencer's account* of what *Governor Geary had said* was the western extension of the northern boundary from the head of the south fork (Record p. 126); the irregular line he suggests as an alternative line reaching to the main ridge, of which the straight line (stopping at Spencer's Point) falls short (Record p. 130). And the need of extending *any* line west from the head of the south fork arises only from a conviction that it was *absolutely necessary* that the northern boundary should be carried west to the main ridge of the Cascades, and that the treaty makers, from their imperfect topographic knowledge of the country, supposed that the south fork of the Atanum did extend west that far.

Second. That the lines suggested are not simply uncalled for by the treaty *but come into direct collision* with its calls. By those calls the line from the point where the Cascade Mountains were reached was to run southerly *along the mountains and divides separating the WATERS of the Klickitat from those of the Pisco river*. Barnard's lines do not do this. His lines, instead of passing between the *waters* of the Klickitat and Pisco and thus excluding the *waters* of the former, include a large part of those waters within the reservation.

Third. That, as is usual in Indian treaties, the calls describe a reservation having *natural boundaries*; and not a single stream would be *crossed* by any line answering to those calls. The line runs first along the Atanum river and the south fork to the mountains, and then along mountains

and divides *separating* waters flowing to one stream from those flowing to another; and, of course, a divide which *separates* streams, cannot possibly cross them. The Barnard lines, on the other hand, not only do not follow natural boundaries, but the line running west from the south fork crosses one branch of the Klickitat; the line running south from Spencer's Point to the Hump crosses several more; and the line running southwest from the Hump to Grayback Peak crosses the main Klickitat and four of its branches.

Let us now turn back to the point at which, as we have seen, the first difficulty arises, namely the head of the south fork of the Atanum. The call which brings us here is "thence along the southern tributary to the Cascade Mountains." The court below reasons that by this, the treaty makers meant to designate the *main ridge* of those mountains, and concludes, with Barnard, that from their imperfect topographic knowledge of the country the treaty makers believed that the Atanum took its rise in the main ridge, and therefore that there was justification for projecting *some* kind of a line west to the main ridge.

But if instead of indulging these conjectures, we assume that the treaty makers *meant what they said* and that their topographic knowledge was not so imperfect as Mr. Barnard thought it to be, we get a very different result. Surely this is a fair assumption to make. The suit is brought to cancel titles; those titles are, so to speak, in possession; courts are never disposed lightly to disturb them; and to put it on the lowest ground, it is at least as fair to assume that the treaty makers *did* know what they were doing and saying for the purpose of sustaining titles, as it is to assume that they didn't for the purpose of overthrowing them. Assuming this, then, and having followed the south

fork to the Cascade Mountains, where it has its source, if we then, following the next call of the treaty, turn southerly along *that ridge* of those mountains in which we find ourselves, *every difficulty in following the calls of the treaty at once disappears*. We are upon what is confessedly a ridge of the Cascade Mountains—a ridge, which, as the court will observe from the altitudes shown upon Barnard's map, is *fully as high as the so-called main ridge directly west of it*; we are upon, or, in proceeding southerly we soon come to, the spur "whence flow the waters of the Klickitat and Pisco rivers," the Klickitat flowing to the west and the Pisco (now the Toppenish, Record p. 520), to the east; and we pass "to the divide between the waters of said rivers; and thence along said divide to the divide separating the waters of the Satass river from those flowing into the Columbia river," reaching this latter point at what is shown on Mr. Barnard's map as mile post 51, from which point east along the latter divide to the Yakima river the line is not in dispute. All of the foregoing appears at once from a single glance at Mr. Barnard's own map and it is unnecessary to refer to the map of Mr. Schwartz (Deft's Ex. C.), which fully corroborates it. This line, which thus removes every difficulty, *was the line which Schwartz did follow in 1890, which Noel, after examination, approved, which the Commissioner of the General Land Office accepted in 1891 as defining the western boundary, and in accordance with which lands lying to the west were treated as public lands, and the patents here under attack were issued*. It is true that Schwartz started from the other end of the line as his instructions required him to do (Record p. 326) and, following the southern boundary or divide between the waters of the Satass and Columbia rivers west to mile

post 51, turned north at that point along the divide to the mountain range separating the waters of the Klickitat and Pisco; but, of course, it is a matter of indifference which end he started from.

We repeat that following this course, every difficulty at once disappears. The south fork is followed "to the Cascade Mountains"; and then the range of those mountains thus reached is followed southerly along the divide between the waters of the Klickitat and the Pisco to the divide separating the waters of the Satass and Columbia where the controversy as to the boundary ends. And what is most striking, and, as we think, compelling, is that the Klickitat *waters* are left on one side and the Pisco *waters* on the other; no streams are crossed; natural boundaries are followed all the way, and a natural reservation or enclosure is formed (with the boundaries of which the Indians could readily become familiar), watered by the Atanum, Pisco, Satass and Yakima rivers, *and excluding the waters of other rivers.*

But, it is objected, these boundaries will not do because the northern boundary does not extend west to the main ridge of the Cascade Mountains. *But the treaty does not call for its extension west to the main ridge of the Cascade Mountains.* It says west "to the Cascade Mountains"; and we respectfully insist that even if the south fork extended west a hundred miles beyond those mountains, the northern boundary would stop on its westward course as soon as they were reached; but as it has its source in the first range reached there can be no possible question about the matter. That the Cascade Mountains are actually reached by following the south fork to its source is past dispute. The trial court expressly says so, (Record p. 519) though the range is also known as the Satass or Sincoe range; and in

the original letter of December 3, 1889, from Agent Priestly to the Commissioner of Indian Affairs (Record p. 483),—the letter which submitted the whole controversy as to the western boundary which the Schwartz survey of 1890 was supposed to settle—it is recognized that *the single question* was whether this ridge or another ridge farther west was the main ridge referred to in the treaty. We quote from this letter as follows:

"The western boundary has I believe never been surveyed. It is described in the treaty as 'along the main ridge of the Cascade Mountains, south and east of Mt. Adams to the spur whence flows the waters of the Klickitat and Pisco rivers.' *Which is the 'main ridge' of the Cascade Mountains here referred to is a subject of disagreement.* Indians claim the 'main ridge' extends to the base of Mount Adams on the south and east. While white men with diverse interests claim the 'main ridge' referred to, to be farther east. No river known as the Pisco is shown on any map, and I have found no person, white or Indian, who has knowledge of any river of that name. *All the country south and east of Mount Adams for 40 or 50 miles is regarded as part of the Cascade range—being wholly mountainous.* In view of these facts alone, I consider a survey of the western boundary necessary."

But the court below says that though the treaty does not say "to the *main* ridge of the Cascade Mountains," it evidently must mean this, because the next call "defines the line as running southerly along the main ridge and the line could not pass southerly along that ridge unless it should first be reached" (Record p. 520). *But the next call does NOT define the line as running southerly along the main ridge.* The next call says "southerly along the main ridge of said mountains, *passing south and east of Mount Adams.*" Were the comma after the word "mountains" in this call to

be cut out, there could be hardly a question that the words "passing south and east of Mount Adams" qualified the word "mountains" and indicated which ridge was intended, namely a main ridge, (as distinguished from spurs, or "subdivides," Record pp. 263, 264) which should pass south and east of Mount Adams; but even with the comma there, we think the meaning plain.

Here then is the error of the trial court. That court assumed with Barnard that the treaty required the extension of the northern boundary to the main ridge of the Cascade Mountains, using the term "main ridge" in the absolute, unqualified sense; but it does no such thing. Had the call along the south fork been "to the *main* ridge of the Cascade Mountains," that call would have been absolute, and it would have supposed upon the part of the framers of the treaty a recognition of some particular ridge as the absolute main ridge, and a belief that it would be commonly recognized as such by others as well. But the treaty was made in 1855. The "main ridge" is not a matter of divine ordinance. The Almighty has not stamped any particular ridge as the "main ridge;" and to have spoken absolutely at that time of the "main ridge" might easily have been misleading. There is no reason even now for calling any ridge the main ridge, as distinguished from other ridges equally high, except that topographers unite in doing so; and as said above, this ridge of the Cascades in which the south fork has its rise is *as high* at that point as what is now known as the main ridge at a point directly west. It flattens out somewhat farther south, but so does the main ridge (Record pp. 130, 191); and from the valley of the Yakima it looks like the main ridge (Record pp. 221, 223, 291). To have spoken of any ridge as the absolute main ridge, therefore, might, as already stated, have been misleading. But if the

course was described as running simply "to the Cascade Mountains," there could not be and there never has been any question when those mountains were reached; and the next course being not simply "southerly along the main ridge of said mountains" but "southerly along the main ridge of said mountains, *passing south and east of Mt. Adams,*" the particular ridge was clearly indicated. The ridge which the Schwartz survey of 1890 followed answers this description, for it does pass south and east of Mt. Adams. The main ridge as now known does not. Mt. Adams is a *part* of that ridge (Record pp. 104, 242) and Barnard is able to bring his line east of Mt. Adams only by making it arbitrarily "*swing round the eastern slope of it,*" or, as he suggests as an alternative "*by passing over the summit of it*" (Record p. 130). But what establishes to a demonstration that the ridge followed by Schwartz is the true boundary is that *only by following it can the line pass between the WATERS of the Klickitat and Pisco rivers*; and nothing can be plainer than that under the calls of the treaty, the waters of one of those rivers were to be included within and those of the other were to be excluded from the reservation.

There is another circumstance which may properly be noted here. As already stated, both Barnard and the trial court reach the conclusion that the northern boundary extended west to what is now known as the main ridge, upon the assumption that "from their imperfect topographic knowledge of the country" the treaty makers supposed the south fork extended west that far (Record pp. 129, 521) and the Court of Appeals takes the same view. (Rec. p. 639). Now Barnard's own original report, upon which all these proceedings are based, contains within itself conclusive evidence that this assumption of imperfect knowledge, at least as regards the source of the south fork of the Atanum,

was wholly gratuitous. It will be remembered that Chief Spencer gave to Barnard the boundaries of the reservation as Governor Geary had described them (Record p. 126). Just when Governor Geary was in charge, or when he had this conversation with Chief Spencer does not appear, but he was the immediate successor of Governor Stevens and his description of the limits of the reservation is treated by Barnard as giving a practically contemporaneous construction of the calls of the treaty. These limits as Governor Geary stated them to Chief Spencer, are as follows:

"Up the Atanum river from its mouth to the mouth of the South Fork; thence up the South Fork to the head; thence directly west across the Little Klickitat to a high point just this side of Goat Rocks; thence to a conical hump on the southeast slope of Mount Adams."

Does this description indicate that imperfect knowledge of the topography of the country of which so much is said? Does it indicate a belief on the part of Governor Geary that the south fork extended west to what is now called the main ridge? Does it not show very clearly that he knew that fork did not extend west that far? His language is "thence up the south fork to the head; thence directly west across the Little Klickitat to a high point just this side of Goat Rocks." He knew, then, where the head of the south fork was, and that that fork did *not* extend west to what is now called the main ridge; that it had to cross the Little Klickitat to get to the main ridge. What basis is there then for the assumption of general ignorance of the fact that it did not reach there?

It is true that Governor Geary's language, as reported forty years afterwards by an unlettered Indian, suggests boundaries of the reservation different from those upon which we are here insisting—suggests, in fact, the identical bound-

aries for which the government is here contending. And if the clearly expressed words of the treaty can be varied by an arbitrary description of this kind given orally to one of the Indians, of course there is an end of the matter. But whatever else may be said of this language it distinctly negatives the assumption of contemporaneous ignorance as to where the south fork of the Atanum took its rise.

Again, Chief Spencer knew this Sincoe range to be the divide separating the waters of the Klickitat and Pisco. He says "the water flows east and west. East of them, the east side the water flows east and west side the water flows west into the Klickitat" (Record p. 153).

Again, Barnard learned in the course of his inquiry that the Indians were accustomed to hunt and pick berries in the vicinity of the mountain called "Walp," on the main ridge, and he draws from this an argument in support of his contention that the reservation boundaries were meant to include these hunting grounds and berry patches. He says:

"Now, in regard to what the Indians expected, they had for several years previous to the treaty been in the habit of hunting in the valley of the Klickitat and in the vicinity of Goat Rocks, which are prominent points, 8,200 feet high, and a good landmark, and where mountain goats were numerous; also of making annual excursions to the vicinity of Walp to gather berries, and a berry patch is considered a very valuable possession by the Indians. The Indians would, therefore, naturally desire to have these localities included in their reservation."

The trial court, too, thinks there is force in this reasoning and refers to it in his opinion (Record p. 525). But when the treaty is considered as a whole, these facts, instead of furnishing grounds for believing that these hunting grounds and berry patches were included within the

reservation, furnish the clearest reasons for believing that they were recognized by the treaty makers as falling outside it; for by the third article of the treaty (12 Stat. 953) the Indians, in addition to their exclusive rights *within* the reservation, are given "the privilege of hunting, gathering roots and berries and pasturing their horses and cattle *upon open and unclaimed land.*"

But, it will be said, if all this is so, if the northern boundary of the reservation does not extend west to the main ridge as now known, what is the explanation of the large map which Governor Stevens sent to the Indian Office in Washington in 1857, showing, among others, the Yakima Reservation, and showing its western boundary to be practically upon the main ridge as now known? And what is the explanation of the "White Swan" map, which consists of a tracing of the reservation from the large map, and which shows the same thing?

We attach a copy of the White Swan map to this brief. The Stevens map is too large for incorporation in the brief but a copy of it will be found at page 583 of the record, and the original of this as well as of all other Exhibits has been forwarded to and is in the custody of the clerk of this court, so as to be available for inspection if necessary. Undeniably the Stevens map and the White Swan map do carry the south fork of the Atanum west to a point far beyond its real source, and, indeed, beyond the main ridge of the Cascades as now known. They are imperfect maps in that they cannot be brought to fit the topography of the country; but certainly so far as they go, they tend to indicate that the person who made them believed the northern boundary to extend to and even west of the main ridge as now known. And if the question were an original one, and there had been no authoritative survey

of the western boundary, and therefore no presumption in favor of rights vesting in accordance with that survey, and we were now first considering where the line should fall, we should certainly feel,—not that the evidence of the maps was sufficiently strong to overcome the plain language of the treaty, the call for stopping where the south fork stops, the call for stopping when the Cascade Mountains are reached, the call for following that ridge of those mountains which passes south and east of Mt. Adams (and all of these calls must be ignored if the maps are to be accepted as correct)—but we should feel, we say, that these maps were entitled to great respect, and could understand how impartial minds might reach a conclusion different from ours, and could hold that maps made so near the date of the treaty ought to be accepted as controlling, notwithstanding their opposition to some of the treaty's calls.

But we are not here concerned with the question whether these maps should or should not be accepted as defining the reservation boundaries, *because the government itself refuses to accept them as doing so*. Let it once accept them as correctly defining the reservation and its case is lost; *because all of the lands here sought to be recovered lie outside the boundaries as shown in these maps*. The maker of the maps recognized the necessity of having his western boundary line *separate the WATERS of the Klickitat and Pisco rivers*; and while he runs his north line much farther west than it should go, and thus does not follow natural boundaries in fact, he professes to be doing so, and evidently thinks he is doing so. He carries the south fork west with him, and having made a wide detour, *he brings his lines back to the divide separating the waters of the Klickitat and Pisco* and follows that divide, as Schwartz does, to the divide between the waters of the Satass and the Colum-

bia. While his lines, therefore, would include some lands which the Schwartz survey excludes, the lands here sought to be recovered lie to the southwest of them. Barnard made no attempt to run his lines in accordance with the White Swan map (Record p. 101); and he does not testify that the lands here in question lie within the boundaries which that map defines. And so conscious was counsel for the government that the recognition of this map as correctly describing the reservation would be fatal to his case that he was careful, on introducing it in evidence to say that it was not to be considered as "limiting the government's claim as to the amount of land in the reservation or as showing with accuracy or precision the southwestern boundary" (Record pp. 96, 205).

Our position then with regard to these maps is, first, that if the question were an original one as to what are the boundaries of the reservation, the boundaries described in these maps could not control as against the plain calls of the treaty, which stop in their westward course where the south fork stops, at the Cascade Mountains, and turn south along that ridge of the Cascades running south and east of Mt. Adams; second (and this is a proposition which will be more fully discussed under proposition two of this brief), that as the question is not an original one but was considered and determined by the Land Department, these maps cannot prevail where they are opposed not only to the calls of the treaty but to the survey of 1890 under which patents have issued; and third, that if they are to be accepted as describing the reservation, they must be accepted as a whole. The government cannot blow hot and cold with them. It cannot accept that portion of them which is favorable to its contention and reject what is unfavorable; and accepting them as a whole and as correctly describing

the Yakima Reservation, the lands in question lie outside of it, and therefore the government's case fails.

As said above, the Stevens map *professes* to follow natural boundaries and to follow, among others, the divide between the waters of the Klickitat and Pisco; and from the point where its lines reach that divide after their detour to the west, it apparently does so. The lines of the Barnard survey on the other hand do not. They cross and recross the Klickitat and its tributaries; and this brings us to the explanation offered by counsel in the courts below of this obvious departure from the treaty calls. Barnard, himself, offers no explanation of it in his report. But the departure is so glaring, so apparent upon the slightest inspection of Barnard's own map that counsel could not but be sensible of the necessity of making some explanation of it; and their explanation in their brief below (and the trial court appears to have adopted it as sound, Record pp. 520-521) was this: They said the river now known as the Klickitat was not so known when the treaty was signed. In speaking of the Klickitat, the makers of the treaty had in mind the White Salmon as is apparent from the White Swan map in which the Klickitat river is shown as lying west of Mount Adams, where the White Salmon actually *does* lie, and in which map no name at all was given to the stream on the east of Mount Adams now known as the Klickitat. Therefore, counsel said, when the treaty makers spoke of the Klickitat, they meant the White Salmon.

Without stopping to enumerate all of the difficulties we should get into in trying to make this theory fit the facts, we submit the following reasons why it is utterly unsound:

1. The theory supposes that the White Salmon river was known as the Klickitat when the treaty was signed. *Not one witness says so.* The supposition is purely one

of counsel, without a word in the record to support it. On the contrary all of the witnesses clearly distinguish the two rivers. Chief Spencer speaks of going from the White Salmon to the Klickitat (Record p. 148); and he describes the northern boundary as crossing the Klickitat from the head of the south fork west to Spencer's Point (Record pp. 82, 126), showing that at about the date of the treaty the Klickitat river as known to him was the Klickitat river as it is known today, lying *east* of Mt. Adams.

2. The treaty itself refers to the White Salmon river as well as to the Klickitat river, showing that the two rivers were not treated as identical (12 Stat. at L. 952).

3. Though the ^{Swan}White Salmon map does not show it, the large map (Ex. 6, ^{Rec 583}~~attached to this brief~~) *does* show the White Salmon river as distinct from the Klickitat river and shows it with substantial accuracy as it is shown on the maps of this day.

4. The White Swan map is, of course, inaccurate (as witness its carrying the South Fork of the Atanum west of Mount Adams) but the stream running southeasterly from the west slope of Mount Adams which is *called* the Klickitat on the White Swan map is indisputably a *branch* of the Klickitat and in some of the maps even of this day, it is described as a part of the Klickitat. In defendant's Exhibit "D" (a tracing of a part of which is attached to this brief) the same stream is shown as Bacon Creek and as *flowing into* the Klickitat.

5. Finally it is plain that whether the maker of the White Swan map did or did not regard as the Klickitat the main stream flowing southerly on the east side of Mount Adams which now bears that name, it is certain that he regarded the *WATERS* of that stream as the *WATERS* of the Klickitat. He shows them as flowing, together with the

stream which he calls the Klickitat, into the Columbia, and the line of the reservation, as shown on his map, follows the divide between these waters and the waters of the Pisco, and excludes the former from the reservation. The call of the treaty following the divide between the waters of the Klickitat and the Pisco was a ridiculous call if those two streams were thought to be separated not only by Mount Adams but by other independent streams.

But it is said that the map of the Berry and Lodge survey made in 1861 (Record p. 581, copy being hereto attached) carries the southern line of the reservation west to the Klickitat, that is, to a point a considerable distance west of the divide separating the waters of the Klickitat and Pisco rivers. This is true. What the idea of these surveyors was as to where the *western boundary* lay no one can say. Certainly at the Klickitat river they could not have found any *divide* separating the waters of that river from the Pisco. They had passed that divide before they reached the Klickitat; for no one disputes that the divide followed by Schwartz is the divide between the Klickitat and the Pisco, or that this divide is by the treaty made a part of the western boundary. Under their instructions, however, they were required to survey only the southern boundary (Record p. 318) and they made no attempt to locate the western boundary. No field notes of the survey have been introduced, and no report appears to have been made of it. It does not appear when it was filed in the Department of Indian Affairs, nor does it appear to have ever been filed in the Land Department. But at any rate it left unsettled the question as to the location of the western boundary.

As regards the oral testimony as to what has been thought to be the western boundary of the reservation, that shows

conflicting claims, as might have been expected. The original letter of Agent Priestley in 1889 showed this conflict, and the survey of 1890 was ordered to settle it. It seems clear that the Indians asserted rights in the lands west of the divide between the Klickitat and Pisco, and equally clear that the white settlers denied them, and that those settlers lived from the early sixties, unmolested, in the valley of which these lands formed a part (Record p. 288, 289). In the fall of 1860 the western boundary was pointed out by Father Wilbur, then a representative of the government, and afterwards Indian Agent, as being upon the very divide where the Schwartz survey located it (Record pp. 285-287). Certainly the Department at Washington regarded the disputed tract as public lands, for a large portion of it was surveyed between 1877 and 1885, and the plats of the survey were filed at the local land office, and settlers were permitted to enter them. The court will see, on examination of Exhibit "K" (Record pp. 592-626) consisting of certified copies of township plats (Record p. 498) that the following townships, being within the disputed area, were all surveyed, and plats filed in the local land office upon the following dates, respectively:

Tp.	6	N.	R.	13	E.	1879	(Record p. 592.)
"	6	"	"	14	"	1877	(Record p. 595.)
"	6	"	"	15	"	1877	(Record p. 597.)
"	6	"	"	16	"	1877	(Record p. 599.)
"	7	"	"	12	"	1883	(Record p. 602.)
"	7	"	"	13	"	1884	(Record p. 604.)
"	7	"	"	14	"	1884	(Record p. 606.)
"	8	"	"	13	"	1885	(Record p. 611.)
"	9	"	"	13	"	1885	(Record p. 616.)

If the plats referred to are examined in connection with defendant's Exhibit "D" (Record p. 589), copy of which is attached to this brief, the court will see just where these

townships are located with reference to the tract in dispute. All of them lie, wholly or partly, within it.

Following the pages of the record in which the above plats are shown, respectively, will be found plats of the same townships as surveyed since the adoption by the government of the Barnard lines. In the plat of Tp. 6 N., 16 E. (Record p. 599) only the northeastern part of the township is indicated as falling within the reservation. This plat was made in 1877 and it accords with the Schwartz survey of 1890 which also places this part of the township within the reservation. And further conclusive evidence that the Land Department in 1884 regarded the western boundary of the reservation as being where Schwartz located it in 1890 is found in defendant's Exhibit "L" (Record p. 499) when read in connection with the Township plat of 6 N. 16 E. (Record pp. 600-601). In that letter the Register and Receiver are asked to withdraw certain lands in that township as well as in townships 6 N. 17 E., 6 N. 18 E., and 6 N. 19 E. because a portion of those townships lie north of the divide separating the Satass and Columbia rivers, and that line, the writer says, is the south boundary of the reservation. He specifies the sections that are to be withdrawn, and what is specially significant is this: that the sections in 6 N. 16 E. which he asks withdrawn, as being within the reservation, lie east of the divide between the Klickitat and the Pisco as marked six years after by Schwartz. He asks that sections 1, 2, 3, and 4, and the E½ of 5 and 8 and all of 9, 10, 11 and 12 be withdrawn as being in the reservation; but he does not ask that the west halves of 5 and 8 or that any of sections 6 and 7 be withdrawn, believing them to lie west of the divide. As a matter of fact when the line was run by Schwartz six years later, only a portion of sections 6 and 7 were found to fall west of the reservation line (Record p. 601), but

the Land Department evidently thought the whole of them did, and so did not withdraw them; and what is absolutely conclusive that the western boundary of the reservation was thought by the Land Department to fall within Range 16 East is that though townships 6 N. 13 E., 6 N. 14 E. and 6 N. 15 E. had been surveyed from five to seven years before (Record pp. 592, 595, 597), and the township plats were then on file in the local office, no request is made to withdraw any of the lands in these townships as being within the reservation, though the northern sections of them were clearly within that reservation if the southern boundary line extended west as now claimed and did not stop at the divide between the Klickitat and Pisco. (See Record pp. 589, 594, 596, 598.)

Upon the copies of Exhibit D hereto attached we have indicated in red ink the year in which each township in the disputed area was surveyed.

While it is conceded on all hands that Schwartz was an efficient and capable surveyor; and while the examiner employed by the government to go over and check his work reported that "great care had been taken and much skill used by Deputy Surveyor Schwartz in the establishment of this line" and that "this is one of the best pieces of work I have ever seen" (Record p. 495); and while there is not now, nor has there ever been, either from the government or from any one else, the slightest suggestion that the mistake in running the Schwartz line, if it was a mistake at all, was anything other than an honest mistake,—yet the Court of Appeals says that in running the western boundary Schwartz did not follow the instructions of the Surveyor General; and it appears to attach a great deal of significance to this. Those instructions, as quoted in the opinion of the Court of Appeals, are as follows:

"From the 47½ mile post, the line to be surveyed extends along the divide separating the waters of the Satass from those flowing into the Columbia, 'to the divide' between the waters of the Klickitat and Pisco Rivers; thence along said divide to 'the spur whence flow the waters of said 'rivers; thence up said spur to the main 'ridge of the Cascade Mountains; thence 'northerly along said ridge, passing south and east of Mount Adams, 'to the southern tributary of the Attahnam river—"to the established corner of fractional sections 6 and 31 on the south boundary of Township 12 north, range 15 east, Willamette Meridian. According to the statement of the Agent in charge of the Yakima Agency, 'the question as to which is the main ridge of the Cascade Mountains referred to in the treaty is a subject of disagreement, the Indians claiming that the main ridge extends to the base of Mount Adams on the south and east—white men with diverse interests claiming the said ridge to be further east;' also 'that no river known as the Pisco, is shown on any map, and that he has found no person, white or Indian, who has knowledge of any river of that name', 'that the river designated as the Toppenish on the map of 1887, is the Pisco referred to in the Treaty. It is delineated on the diagram, as rising about six miles nearly due east of Mount Adams and a very short distance north of the second Standard Parallel.'

It is, therefore, advisable, that before you proceed to definitely locate and extend the boundary of the Reservation from the 47½ mile post, you confer with the Agent in charge of the Yakima Agency, and with other white persons, and Indians, familiar with the country, and obtain all the information possible that will tend to a proper location and establishment of this section of the boundary line according to the provisions of the treaty of June 9, 1855." (Record p. 632.)

Commenting on those instructions the Court of Appeals says:

"His instructions were that the western boundary line coming up from the south should be 'the main

ridge of the Cascade Mountains, thence northerly along said ridge, passing south and east of Mount Adams, to the southern tributary of the Attah-nam River.' He was further instructed that the question as to which was the main ridge of the Cascade Mountains referred to in the Treaty was a subject of disagreement; the Indians claiming that the main ridge extended to the base of Mount Adams on the south and east—white men with diverse interests claiming the said ridge to be further east.' He was further instructed: 'It is, therefore, advisable, that before you proceed to definitely locate and extend the boundary of the Reservation from the 47½ mile post, you confer with the Agent in charge of the Yakima Agency, and with other white persons, and Indians, familiar with the country, and obtain all the information possible that will tend to a proper location and establishment of this section of the boundary line according to the provisions of the treaty of June 9, 1855.' Schwartz appears to have consulted with the Indian Agent in charge of the Yakima Agency, and with other white persons and Indians, and found and identified the main ridge of the Cascade Mountains. But he did not carry his survey along that ridge, as instructed, but along a ridge 15 to 20 miles further east. His reason for running his line along the eastern ridge instead of the main ridge to the west was that the former was a ridge dividing the waters of the Satass and Klickitat Rivers, and along which he could carry his line to the source of the southern tributary of the Attah-nam River, 'without crossing the Klickitat River and the treaty did not call for that.' But his instructions did not require him to follow that ridge or to avoid crossing the Klickitat River; on the contrary, he was instructed to ascertain and follow the main ridge of the Cascade Mountains; nor did any call of the treaty require him to follow the ridge dividing the waters of the Satass and Klickitat Rivers." (Record p. 637.)

We are not quite sure that we understand just what the Court of Appeals means by the language above quoted.

The question which we are all trying to settle,—which Schwartz in 1890 was trying to settle,— is and was: What line does actually answer to the western boundary of the Reservation as defined by the treaty? What has this question to do with the question whether Schwartz did or did not follow the lines suggested to him by the Surveyor General? The Surveyor General could not change the treaty boundaries. All that he could rightfully do was to ascertain and fix them; and if he had in fact directed Schwartz to follow one line, and Schwartz in the field had discovered that the treaty required him to follow another, it would have been his plain duty to follow the treaty calls.

But in point of fact, the Surveyor General *did not* "instruct" Schwartz to follow the main ridge of the Cascade Mountains; and the Court of Appeals is utterly mistaken in saying that he did. The instructions are short. They are in the record (p. 325-330). We ask the Court to read them. True, the Surveyor General in those instructions quotes some of the language of the treaty calls, including that which refers to the "main ridge"; but he is so far from instructing Schwartz to follow any absolute main ridge that the very question which he submits to him is the question "*which is the main ridge of the Cascade Mountains referred to in the treaty*"; and he directs him to "obtain all the information possible that will tend to a proper location and establishment of this section of the boundary line *according to the provisions of the treaty of June 9, 1855.*" Certainly a surveyor charged with the duty of *ascertaining* the main ridge referred to in the treaty cannot properly be said to have violated instructions simply because he fixes upon one ridge instead of another. If it had been *certain* which was the ridge forming the western boundary there would have been no necessity for the survey.

Again, the Court of Appeals, in the passage above quoted, commenting upon Schwartz's statement that only by following the ridge which he actually did follow could he avoid crossing the Klickitat River, says: "His instructions *did not require him to follow that ridge or to avoid crossing the Klickitat River.*" But whether his instructions did or did not require this, the *treaty* certainly required it. By the calls of the treaty the WATERS of the Klickitat River were to be excluded from the reservation, and the WATERS of the Pisco (now the Toppenish) and of the Satass were to be included within it. Schwartz, therefore, was plainly required by the calls of the treaty to run a line which should leave the waters of the Pisco and Satass Rivers, on the one hand, *within* the reservation, and the waters of the Klickitat River, on the other hand, *outside* it; and the Court of Appeals is plainly in error in saying, in the passage above quoted, that "no call of the treaty required Schwartz to follow the ridge dividing the waters of the Satass and Klickitat Rivers."

2. **If there were doubt as to the location of the boundaries called for by the treaty, that doubt would have to be resolved in favor of the patents.**

We have thus far considered the question of the location of the boundaries as an original question, unaffected by presumptions one way or the other. But it is not such. On the contrary it is exactly the same question which Mr. Priestley, the Indian Agent, submitted to the Department in 1889, the question, namely, which was the main ridge of mountains forming the western boundary. This question being before the Department the survey of 1890 was ordered *for the very purpose* of ascertaining that boundary and setting the question at rest. That survey was made by a competent surveyor. It answers every call of the treaty except that its lines do not touch or follow what is now commonly known as the main ridge of the Cascade Mountains; but whether the boundaries of the reservation were meant to reach or follow that particular ridge is at least disputable. After a thorough examination in the following year the survey was approved and accepted by the government, and the public lands for more than ten years thereafter were disposed of in accordance with it. Not the slightest suggestion of fraud attaches to it; all that is claimed is that a mistake was made. And this mistake, be it observed, does not rest on any misunderstanding on the part of the surveyor, or of any of the representatives of the government, of any of the essential facts, nor does it rest in any assumption that they were then ignorant of something that has since been discovered. Nothing new has been brought to light; all of the facts now known were known then. The controversy as to which was the ridge forming the western boundary was known to Schwartz who made the survey, to Noel who in the following year examined and approved

it, and to the Department which accepted and adopted it and thereafter disposed of the public lands in accordance with it; and far from assenting to the proposition that any mistake was made in it, Schwartz and Noel, both of whom were called as witnesses in this case, insist that it is correct (Record pp. 205-264). This survey, thus made and thus acted upon for years, the decree below displaces for the arbitrary one suggested by the government topographer after his hurried examination in 1899. We submit that even if it can be said that there is doubt as to the correctness of the Schwartz survey, the presumptions in its favor and in favor of the titles resting upon it, call for a reversal of this decree.

This court has several times declared that a survey made by the government is absolutely conclusive against *collateral* attack.

West v. Cochran, 17 How. 403;

Cragin v. Powell, 128 U. S. 691;

Knight v. U. S. Land Assn., 142 U. S. 161;

Stoneroad v. Stoneroad, 158 U. S. 240.

But it is said that this is not a collateral, but a direct attack; and this is true. The cases cited may be distinguished upon that ground. We cite them here only as showing the respect with which the courts view a definitive departmental ruling, and their reluctance to disturb it. But the *Marxwell Land Grant Case*, 121 U. S. 325, admits of no such distinction. That case, like the present case, involved a direct attack by the United States upon a survey made under the government's supervision, and sought the cancellation of a patent, issued in 1879, of nearly two million acres of land in New Mexico and Colorado, upon the very ground relied on here, namely, *that the survey was erroneous*. The survey had been completed in 1877, two years before the patent was issued, and the suit for cancellation

was begun in 1882. There was in that case, therefore, a period of only five years between the date of the survey and the date of the commencement of the action to set it aside. In the present case this period is seventeen years. Moreover there was in that case what there is not in the present case,—a direct charge of fraud in the location of the survey, as well as a charge of mistake. After summarizing the evidence offered to show that the lines of the survey had been mistakenly run so as to include a larger tract of ground than was actually called for by the terms of the grant, the court, speaking unanimously through Mr. Justice Miller, said at p. 377 :

"Without going into this evidence more minutely, we are content to say that, while in favor of the correctness of this survey, in the points assailed, it is as strong or stronger than that for any other survey which could be made, or which has been suggested by the counsel for the United States, we are very clear that it is not the province of this court to set aside and declare null and void these surveys and patents approved by the officers of the government whose duty it was to consider them, and who evidently did consider them with great attention, upon the mere possibility or a bare probability that some other survey would more accurately represent the terms of the grant."

And after considering the evidence on the question of fraud, the court closes an exhaustive discussion of the entire case with the following language :

"The great importance of this case, as regards the immense quantity of land involved and its value, reinforced by the circumstance of the number of cases coming before the courts, in which, under the directions of the Attorney General, attempts are made to set aside the decrees of the courts, the patents issued by the government, and in this case an act of Congress,

seems to call for some remarks as to the nature of the testimony and other circumstances which will justify a court in granting such relief. The cases of this character which have come to the Supreme Court of the United States have been so few in number that but little has been said in regard to the general principles which should govern their decision. There are decisions enough to guide us in cases where a patent or other title derived directly from the government has been questioned in a collateral proceeding, brought to enforce that title or to assert a defence under it; but the distinction between this class of cases, in which all the presumptions are in favor of the validity of the title, and in regard to which a wise policy has forbidden that they should be thus attacked, and those like the present, in which an action is brought in a court of chancery to vacate, to set aside, or to annul the patent itself, or other evidence of title from the United States, is very obvious. In either case, however, the deliberate action of the tribunals, to which the law commits the determination of all preliminary questions and the control of the processes by which this evidence of title is issued to the grantee, demands that to annul such an instrument and destroy the title claimed under it, the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court, and that the case itself must be within the class of causes for which such an instrument may be avoided, *United States v. Throckmorton*, 98 U. S. 61.

In the case of *United States v. Stone*, 2 Wall. 525, 535, this court said: 'A patent is the highest evidence of title, and is conclusive as against the government, and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal. In England this was originally done by *scire facias*, but a bill in chancery is found a more convenient remedy.' This was a chancery proceeding to set aside a patent for land.

In the case of *Johnson v. Towsley*, 13 Wall. 72, the court, considering the force and effect to be given to the actions of the officers of the Land Department of

the government, announces the doctrine that their decision, made within the scope of their authority on questions of this kind, is in general conclusive everywhere, except when reconsidered by way of appeal within that Department; and that as to the facts on which their decision is based, in the absence of fraud or mistake, that decision is conclusive even in courts of justice, when the title afterwards comes in question. But that in this class of cases, as in all others, there exists in the courts of equity the jurisdiction to correct mistakes, to relieve against frauds and impositions, and, in cases where it is clear that those officers have by a mistake of the law given to one man the land which on the undisputed facts belongs to another to give proper relief.

These propositions have been repeatedly reaffirmed in this court. *Moore v. Robbins*, 96 U. S. 530; *Marquez v. Frisbie*, 101 U. S. 473; *United States v. Atherton*, 102 U. S. 372; *Shepley v. Cowan*, 91 U. S. 330.

In the case of *The Atlantic Delaine Co. v. James*, 94 U. S. 207, Mr. Justice Strong, in delivering the opinion of the court, said, in regard to the power of courts of equity to cancel private contracts between individuals: 'Cancelling an executed contract is an exertion of the most extraordinary power of a court of equity. The power ought not to be exercised except in a clear case, and never for an alleged fraud, unless the fraud be made clearly to appear; never for alleged false representations, unless their falsity is certainly proved, and unless the complainant has been deceived and injured by them.' In Story's *Equity Jurisprudence*, §157, it is said that relief will be granted in cases of written instruments only where there is a plain mistake, clearly made out by satisfactory proofs. Chancellor Kent, in the case of *Lyman v. United Ins. Co.*, 2 Johns. Ch. 632, which had reference to reforming a policy of insurance, says: 'The cases which treat of this head of equity jurisdiction require the mistake to be made out in the most clear and decided manner, and to the entire satisfaction of the court.' See also *Stockbridge Iron Co. v. Hudson Iron Co.*, 107 Mass. 290.

We take the general doctrine to be, that when a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done *must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt.* If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

Again in *United States v. San Jacinto Tin Co.*, 125 U. S. 273, 300, in which, as in the *Maxwell Land Grant Case*, the government sought to cancel patents upon the ground that the survey under which they were issued was fraudulent and incorrect, the court, after holding that the evi-

dence was insufficient to establish fraud, and after quoting some of the above language from the Maxwell Land Grant Case, said:

"As regards the correctness of the location by survey of the grant, whose validity and justice is not questioned, we do not know that we can do better than to copy the language of the circuit judge presiding when the decree was rendered. In his opinion delivered on that occasion, and concurred in by the district judge, he said: 'It is confidently assumed on the part of complainant that the location of the lands patented is palpably wholly outside of the exterior limits described in the original petition, Mexican grant, and the decree of confirmation; that this is so obvious that the grant must have been wilfully and fraudulently located where it is. This is an assumption that, in our judgment, is wholly without justification in the documentary and other evidence in the case. Upon a careful consideration of the subject we are of the opinion that the most that can be reasonably said against the location is, *that the record presents a fair case for an honest difference of opinion; that a plausible argument can honestly be made in support of either side of the proposition.* An erroneous location is certainly not so obvious as to necessarily stamp it as a fraud.'

When we consider the greater facilities possessed by the land department of the government for ascertaining the true location, and their superior fitness for deciding questions pertaining thereto, over those of the judicial department; and when we also remember that this location underwent the scrutiny of the officers in the office of the Surveyor General for California, as well as those of the General Land Office at Washington, and even of the Secretary of the Interior himself, and was finally approved by them all, we are not disposed to make further inquiry as to whether the location was in all respects in exact accordance with what it might possibly be if a resurvey were made under the additional light, if any, now thrown upon the subject."

In the foregoing cases the specific object of the suit was to cancel the patent *on the ground of erroneous survey*; and therefore the language of the court in denying the relief sought is specially apposite here, where the same object is sought to be attained upon the same ground. But it is obvious that the essential question in all such cases is, under what circumstances will the courts, at the suit of the government, cancel a patent which the government has issued, *whatever* be the ground on which cancellation is sought? And in many cases this court, citing the Maxwell Land Grant Case, has said that this relief must be denied unless there is a fullness of proof of the fraud or the mistake relied upon, of which the proof in this case falls very far short.

Colorado Coal Co. v. U. S., 123 U. S. 307;
U. S. v. Des Moines, etc. Co., 142 U. S. 510;
U. S. v. Budd, 144 U. S. 154;
U. S. v. Am. Bell Telephone Co., 167 U. S. 224;
U. S. v. Iron Silver Mining Co., 128 U. S. 673;
U. S. v. Stinson, 197 U. S. 204;
U. S. v. Clark, 200 U. S. 608.

In the light of what is said in these cases upon what principle can the vacation of the Schwartz survey and the cancellation of these patents be justified? Can it be said that the correctness of the Barnard survey is *free from doubt*? It does not even profess to be so. Barnard himself does not assert that it is. The trial court recognizes that it is not. A corrective survey, involving the overthrow of titles and the doing of those things which this court says shall be done only upon evidence that is "clear, unequivocal and convincing," ought at least to remove difficulties. This one introduces them. Even if we grant that the "main ridge" of the treaty is the ridge which Barnard's alternative line follows, we find that in eliminat-

ing one difficulty we have introduced five. (1) Our westward course does not stop on the south fork; (2) it is an arbitrary line from the head of the south fork to the main ridge; (3) natural boundaries have to be abandoned and artificial lines run; (4) we get east of Mt. Adams only by "swinging around the eastern slope" of it; and (5) even after indulging in unlimited conjecture as to the changing of names of streams—conjecture not only unsupported but directly negatived by contemporaneous evidence—we are unable by any conceivable set of lines to exclude the WATERS of the Klickitat river from the reservation. Surely there can be no doubt under these circumstances, as to which survey the preponderance of the evidence favors.

Now how is this argument met by the Court of Appeals? We invite special attention to what that Court says upon this point because we think it plainly erroneous. We quote from the opinion, beginning at page 642 of the record, where the Court takes up this branch of our argument.

"It is next contended that if there is a doubt as to the location of the boundaries called for by the treaty, that doubt should be resolved in favor of the patents issued to the Northern Pacific Railway Company and its predecessor in interest. *We do not admit that there is any doubt* as to the proper location of the western boundary of this reservation, but *assuming that there is*, the rule which resolves such a doubt in favor of the patent issued by the United States does not obtain in this case.

The United States brings this action for itself and on behalf of the Indians as their trustee and guardian. The Yakima Indian Reservation is a tract of land reserved by the Indians out of a much larger tract claimed and occupied by them prior to 1855, and which larger tract they ceded and conveyed to the United States with an agreement with respect to the reserved tract

that it should be 'set apart and so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes and bands of Indians as an Indian Reservation.'

The United States owed the duty of trustee and guardian to preserve the rights of the Indians in the tract reserved and by the treaty it agreed to survey the boundaries of the reservation, and set it apart for the exclusive use and benefit of the Indians. It could not therefore *by an incorrect survey* deprive the Indians of their right of occupation of the land within the legal boundaries of the reservation as established by the treaty. This is the general and well-established law of trust and guardianship in support of which authorities need not be cited. The law has been applied to controversies relating to lands occupied by the Indians in the broadest terms."

Here it will be observed that the Court first refuses to admit that there is any doubt as to the proper location of the western boundary; and, of course, if this Court concurs in this view, that effectually disposes of all that is said under this head of our argument; for as our argument here supposes that there is at least *doubt* as to the proper location of the western boundary, its entire basis is cut from under it when it is formally held that no such doubt exists. Upon this question, therefore, we must and do assume this court's non-concurrence in the proposition that the case is *free from doubt*; and must assume that this court will hold, on the contrary, that there is of necessity *some* doubt as to the correctness of a survey which, as a single glance at the map will show, brings in more difficulties than it removes.

But it is to what follows in the passage above quoted that we ask special attention. "Assuming that there is [doubt]", the court says, "the rule which resolves such a doubt in favor of the patent *does not obtain in this case.*" Why does it not obtain in this case? Because, says the

Court of Appeals, "the United States brings this action for itself and on behalf of the Indians *as their trustee and guardian*. * * * The United States owed *the duty of trustee and guardian* to preserve the rights of the Indians in the tract reserved and by the treaty it agreed to survey the boundaries of the reservation and set it apart for the exclusive use and benefit of the Indians. It could not therefore by an *incorrect survey* deprive the Indians of their right of occupation of the land within the legal boundaries of the reservation as established by the treaty. This is the general and well-established *law of trust and guardianship* in support of which authorities need not be cited."

With the most unfeigned respect for the Court of Appeals we submit that this reasoning is unsound. The rule of the Maxwell Land Grant Case is a rule of *property*; it does not change according as the title to that property is in an Indian or in a white man. It has no concern with the question whether the holder of the title is or is not *sui juris*. If a white man were to come before this court, asserting equitable rights in a given tract of land, upon the ground that an authoritative government survey was erroneous and had operated to deprive him of his title to it; and if he were to support his claim by evidence which left it *doubtful* whether that survey was in fact erroneous, this court would read the Maxwell Land Grant Case to him, and say that before such a claim could prevail, the evidence supporting it "must be clear, unequivocal and convincing"; and that "it is not the province of this court to set aside and declare null and void these surveys and patents approved by the officers of the government whose duty it was to consider them, upon the mere possibility, or a bare probability, that some other survey" would be more accurate. This, we say, would undoubtedly be the rule ap-

plied if the suitor were a white man; and it cannot be that a different rule is to be applied simply because the suitor is not a white man but an Indian. The rights of one not *sui juris* are no higher than the rights of one who is. Rights are not increased simply because they are held by an individual who, because of some disability, requires from the court a more anxious care for their protection; and the principles which protect the Indians' property are exactly the same as, and neither greater nor less than those which protect the property of the white man.

The court says that the government "could not by an *incorrect survey* deprive the Indians of their right of occupation of the land within the legal boundaries of the reservation as established by the treaty." Certainly it could not. Neither could it "by an *incorrect survey*" deprive a white man of any such rights. But in calling it "an *incorrect survey*" the court *begs the whole question*, and withdraws the concession which it has made sixteen lines above, where it indulges the assumption that *it is a doubtful survey*, upon which assumption it professes to be considering the question. "Assuming that there is doubt," the court there says. And we respectfully submit that if there is *doubt*, the principle which protects the holder of the patent title against a claim asserted by a white man afford equal protection against a claim asserted by an Indian.

The trial court suggests that there may be some doubt (record p. 514) as to whether the language used by the Commissioner of the General Land Office in acknowledging receipt from the Surveyor General of the Schwartz map and field notes (record p. 497) was intended as an approval. What difficulty the court finds here we cannot understand. It is surely a matter of indifference what *language* the Commissioner used in accepting or approving the Schwartz

map, provided the subsequent conduct of the Department is unequivocal; and certainly there is no room for mistake here. The Department not only accepted the Schwartz survey as final, but it *acted upon it* as final and for more than ten years after its acceptance issued patents based upon it. No mere *language* of approval could be as emphatic as the *act* of approval involved in parting with the Government's title on the faith of it. The very existence of this suit for the cancellation of these patents proves that the Department accepted it as final, for if it had not so accepted it, if it had regarded the question as to the location of the western boundary as still open, neither the patents to the Railway company, which this suit seeks to cancel, nor the patents to settlers upon the even numbered sections, which the Act of December 21, 1904, protects, would ever have been issued.

It need hardly be said that the Act of Congress of Dec. 21, 1904, does not and cannot change or diminish the rights which defendants possess by virtue of their possession of these patents, nor does it change or profess to change the legal or equitable principles applicable to them. In recognizing the claim of the Indians to the tract of 293,837 acres, Congress may, indeed, be said to have adopted the lines enclosing that tract as the boundaries of the reservation, and to have confirmed the Indians' rights in all that portion of the tract *over which Congress had jurisdiction*. But Congress had jurisdiction only over lands in which other rights had not vested. It had no jurisdiction over those of which the title stood in others, whether it was rightly in them or not. The question whether it was rightly in them—whether a mistake of fact or law was made in giving it to them—is a judicial question, and one upon which the holder of the title has a right to a judicial hear-

ing before that title can be taken from him. Patents cannot be cancelled by legislation; and as an Act of Congress which should say "the patent title to section one, given by the United States to A is hereby cancelled" would be absurd and futile, so an Act of Congress which should assume to accomplish the same end by the more indirect method of saying that "lines which heretofore excluded the lands to which A has title from the lands of the United States shall be changed so as to include them," would be equally futile as an attempt to divest A of his title, and would be equally opposed to the Fifth Amendment. Only by a judicial act after a judicial hearing can a title thus held be taken away; and it is obvious that upon such hearing the holders' rights cannot be prejudged or affected by any previous expression of Congress. We do not understand these principles to be controverted by the government. Indeed the very existence of this suit is a recognition of them, and they are recognized by both of the courts below; but we state them so as to guard against any misunderstanding of our position.

3. Defendants are bona fide purchasers, and as such entitled to protection under the Act of March 2, 1896.

All that has been said above might be said by the Northern Pacific Railroad Company, the original grantee under the Act of 1864, if it were in possession of the lands and were the sole defendant here. That Company might justly urge that these lands were not within the tract reserved, and that any doubt as to whether they were or were not must be resolved in favor of the approved survey. But the lands are not in the possession of the original grantee. Those that were patented prior to September 1, 1896, were purchased at foreclosure sale by the Northern Pacific Railway Company in August, 1896, the separate tracts being offered for sale and sold in government subdivisions. At the same time the Railway Company purchased the right of the Railroad Company to receive unpatented lands. When it purchased, it had no suspicion or doubt as to the correctness of the established survey (Record pp. 306-307). Some of the lands thus purchased were thereafter sold to the individual defendants. Upon the lands bought at the foreclosure sale, as well as upon the right to receive unpatented lands, the Railway Company gave a mortgage to the defendant Mercantile Trust Company. One who purchases at judicial sale is as much a bona fide purchaser as though he purchases directly from the owner; *Pomeroy Equity Jurisprudence*, Sec. 724, 767, 774; and as to the individual defendants, it is *not even alleged* that they were not bona fide purchasers or that they ever had notice of any claim that the boundaries of the reservation, as fixed by the Schwartz survey of 1890, were incorrect. Appellants therefore contend that established principles of equity as well as the

express terms of the Act of March 2, 1896 (29 Stat. at L. 42) forbid the cancellation of these patents.

The trial court admits that defendants are bona fide purchasers, and that this defense is available to them under the rule laid down in *United States v. Clark*, 200 U. S. 601, *United States v. Detroit Timber and Lumber Company*, 200 U. S. 321, and many other cases, "if, in issuing patents, the officers of the Land Department were acting within the scope of powers conferred upon them." (Rec. p. 527.) But the learned court, having first determined that the lands were within the Indian Reservation as defined by the treaty, concludes that the Land Department was without authority to issue patents to them and that the "Indians could not be deprived of their right of occupancy, at least in the absence of an Act of Congress." (Rec. p. 532.) The Court of Appeals takes the same view. (Rec. p. 644.)

But there is an act of Congress. Both courts appear to have overlooked the Act of March 2, 1896, supra. By the express terms of the first section of that act, it is provided that "no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed." So far, then, as Congressional authority is necessary for the validation of these patents, such authority clearly appears in the language quoted.

It is argued, however, that neither the general principles of equity under which bona fide purchasers are protected, nor the express terms of the Act of March 2, 1896, have application here, because the patents were absolutely void, the lands being withdrawn from general sale and the Indians retaining a right of occupancy in them. But the fee was in the United States. The statute would certainly operate as a bar to the assertion by the government against a bona

fide purchaser of *the government's own* right to the fee; and it has been expressly decided that what will bar the United States from recovering land for itself will bar it from recovering for the Indians.

In *United States v. California & Oregon Land Co.*, 192 U. S. 355, the government sought, as in the present case, to cancel patents held by the defendant land company upon the ground that the lands covered by them were within the Klamath Indian Reservation and therefore did not pass to the company under its grant. The land company pleaded that in a previous suit brought by the government in August, 1889, to cancel the same patent, a decree had been entered adjudging the company to be entitled to the land and dismissing the bill. It appeared that in the suit begun in August, 1889, the government had sought the cancellation of the patents *upon the ground that the grant had been forfeited*; and the government insisted that as in that suit it had proceeded solely upon the ground of forfeiture, and had sought only to recover the lands for itself, the decree then entered did not bar the subsequent suit, in which it sued not for itself *but on behalf of the Indians*. But the court held the decree entered in the action begun in August, 1889, to be a complete bar, saying, through Mr. Justice Holmes:

"On the general principles of our law it is tolerably plain that the decree in the suit under the foregoing statute, would be a bar. The parties, the subject matter and the relief sought all were the same. It is said, to be sure, that the United States now is suing in a different character from that in which it brought the former suit. There it sued for itself—*here it sues on behalf of the Indians*. But that is not true in any sense having legal significance. It would be true of a suit by an executor as compared with a suit by the same person on his own behalf. But that is because

in theory of law the executor continues the *person* of the testator, and therefore is a different person from the natural man who fills the office. This is recognized in *Leggott v. Great Northern Railway*, 1 Q. B. D. 599, 606, cited for the United States. Here the plaintiff is the same person that brought the former bill, whatever the difference of the interest intended to be asserted. See *Werlein v. New Orleans*, 177 U. S. 390, 400, 401. The best that can be said, apart from the act just quoted, to distinguish the two suits, is that now the United States puts forward a new ground for its prayer. Formerly it sought to avoid the patents by way of forfeiture. Now it seeks the same conclusion by a different means, that is to say, by evidence that the lands originally were excepted from the grant. But in this, as in the former suit, *it seeks to establish its own title to the fee.*"

There can be no question as to the *power* of Congress to grant a perfect title to lands forming a part of an Indian reservation. Not only may it grant the fee but it may deprive the Indians of their right to occupy the lands granted. The power of Congress to do this has been expressly recognized. *M. K. & T. Ry. Co. v. Roberts*, 152 U. S. 116. And while it is true, as stated in the case just cited, that where lands are set apart by statute or treaty for Indian occupancy, Congress will not be supposed to *grant* them in a subsequent law, *general* in its terms, and not referring specifically to them, it does not follow that an act *passed for the validation of outstanding patents* would not apply to patents for lands within an Indian reservation. The Act of March 2, 1896, was passed for the purpose of giving security to outstanding titles of the government when such titles were in the hands of bona fide purchasers; and while, of course, the government could not thus confirm a title to something which it did not own, it could thus confirm the title to lands of which it held the fee, and as stated in the

Roberts case, *supra*, it is to be presumed that in extinguishing the Indian right of occupancy "the United States will be governed by such considerations of justice as will control a Christian people in their treatment of an ignorant and dependent *people*." Indeed the Act of September 21, 1904 (33 Stat. at L. 596), affords an instance of the exercise by Congress of this power of extinguishing the Indian right of occupancy; for having declared the entire tract of 293,837 acres to be a part of the Yakima Indian Reservation, Congress proceeded to declare:

"That where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by bona fide settlers or purchasers under the public land-laws, such right shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit and in the construction of irrigation works on the Yakima Indian Reservation."

By this provision Congress forbids the abridgment of any valid right acquired by bona fide settlers or purchasers under the public land laws; and under it a settler who had only made an entry would doubtless be protected. The principle upon which Congress has thus protected even the inchoate rights of bona fide settlers or purchasers of Indian lands is the same principle upon which, by the Act of March 2, 1896, it protects the bona fide holders of patents covering lands found, after their issuance, to be Indian lands. The equities of the holders of these rights are in both cases deemed to be such as to justify a confirmation of the rights.

And obviously it was upon this view of the law that the Commissioner of Indian Affairs made his recommendation to the Secretary of the Interior of April 6, 1900, and that the

Secretary transmitted the papers to the Speaker of the House of Representatives. (Rec. pp. 109-119.) The Commissioner recommends "that appropriate action be initiated to secure *reimbursement* to the Indians for the lands of which they claim to have been deprived." He adds: "It is believed to be now impracticable to extend the reservation boundary so as to embrace the lands cut off by the survey of 1890." The Secretary in transmitting these papers transmits with them a draft of a bill (Rec. p. 141) authorizing him to *negotiate an agreement* with the Indians for the settlement of their claims. And Congress in the Act of Dec 21, 1904, while recognizing the claim of the Indians, and protecting *all valid rights*, both vested and *inchoate*, of settlers and purchasers under land laws, makes no provision for the commencement of suits to set aside patents, nor does it suggest that the Act of March 2, 1896, shall be inapplicable to such patents. Clearly, the Act of March 2, 1896, bars the assertion by the United States of its own right in these lands; and under *United States v. Cal & Oregon Land Co.*, *supra*, what operates as a bar, when it asserts only its own right, is a bar when it asserts, as well, the rights of the Indians.

In some of the cases brought to cancel patents issued under a railroad grant (as in *U. S. v. Winona, etc.*, R. R. Co., 165 U. S. 463, 482; *U. S. v. Southern Pacific R. Co.*, 117 Fed. 544, 557; *Southern Pacific R. Co., v. U. S.* 133 Fed. 651, 670) this court has adverted to the question whether the grantee company might not make up, by selections within indemnity limits, for any deficiency in the primary limits occasioned by the cancellation of patents to place lands, and has apparently deemed this a consideration of importance. If it is of importance, the court will observe from the report of the Commissioner of the General Land Office to the Secretary of the Interior, dated March 26, 1906,

which we print in the appendix, and which this court will judicially notice (*Heath v. Wallace*, 138 U. S. 584) that there is already a deficiency of more than four million acres in the grant to the Northern Pacific Railroad Company, and by no possibility can this deficiency be supplied from indemnity limits.

4. The statute of limitations bars the suit as to all patents issued more than six years prior to its commencement.

As to all patents issued more than six years prior to the commencement of this suit, the suit is barred by Sec. 8, Act of March 3, 1891, 26 Stat. at L. 1093, 1099. The courts below held otherwise upon the same grounds on which they held that the rule applicable to bona fide purchasers was not available to defendants, namely, that, the lands being within the Indian Reservation, the Land Department was without authority to issue patents and the patents were wholly void. (Rec. p. 527.) It is true that the same considerations apply to these two defenses, and what we have said above in support of our third proposition applies here. But the Act of March 3, 1891, would be a protection even if defendants were not bona fide purchasers. It is a statute of repose, not limited to lands of any particular class, and we can see no ground for refusing to apply it to patents covering any lands of which the United States own the fee.

The argument of the trial court that these patents were a *nullity*, and therefore the Statute did not apply to them is squarely met by the decision of this court in *United States v. Chandler-Dunbar Water Power Company*, 209 U. S. 447. That was a bill in equity brought by the United States to remove a cloud from its alleged title to two islands which the defendant claimed under patent dated December 1883. The government contended that the patent was void "because the land had been reserved for public purposes"; and it appears from the synopsis of the government's brief on page 448, that a claim was also made that there was *an Indian reserve of an easement* in the lands in question. It was urged that for these reasons the Statute of Limitations

was inapplicable. The court, in holding that the statute was a bar, said:

"There is force in the contention of the United States that the land was reserved and that it had not been surveyed, but we find it unnecessary to state or pass upon the arguments, because we are of opinion that now the patent must be assumed to be good. The statute just referred to provides that 'suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act,' that is to say, from March 31, 1891. This land, whether reserved or not, was public land of the United States and in kind open to sale and conveyance through the Land Department. *United States v. Winona & St. Peter R. R. Co.*, 165 U. S. 463, 476. The patent had been issued in 1883 by the President in due form and in the regular way. Whether or not he had authority to make it, the United States had power to make it or to validate it when made, since the interest of the United States was the only one concerned. We can see no reason for doubting that the statute, which is the voice of the United States, had that effect. It is said that the instrument was void and hence was no patent. *But the statute presupposes an instrument that might be declared void.* When it refers to 'any patent heretofore issued,' it describes the purport and source of the document, not its legal effect. If the act were confined to valid patents it would be almost or quite without use. *Leffingwell v. Warren*, 2 Black 599.

In form the statute only bars suits to annul the patent. But statutes of limitation, with regard to land, at least, which cannot escape from the jurisdiction, generally are held to affect the right, even if in terms only directed against the remedy. *Leffingwell v. Warren*, 2 Black 599, 605; *Sharon v. Tucker*, 144 U. S. 533; *Davis v. Mills*, 194 U. S. 451, 457. This statute must be taken to mean that the patent is to be held good and is to have the same effect against the United States that it would have had if it had been valid in the first place."

We respectfully submit that the decree of the court below should be reversed with directions to the trial court to dismiss the bill.

CHARLES W. BUNN,
CHARLES DONNILLY.

APPENDIX.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

Washington, D. C., March 26, 1906.

The Honorable, The Secretary of the Interior.

Sir:

Referring to your letter of February 29, 1904, directing this office to re-adjust the grant made by the act of July 2, 1864 (13 Stat., 365) and Joint Resolution of May 31, 1870 (16 Stat., 378) to the Northern Pacific Railway Company, I now have the honor to submit tabulated statements showing in detail and in condensed form the results of such re-adjustment which has just been completed and which is brought down to date as nearly as practicable.

According to said statements the grant of 1864, is shown to be deficient by 3,666,451.74 acres and the grant of 1870 by 532,029.73 acres, a total in both grants of 4,198,481.47 less 106,008.48 acres, which the company has selected as indemnity under the act of July 1, 1898 (30 Stat., 597-600), outside the area of this examination, thus leaving a net deficiency of 4,082,472.99 acres.

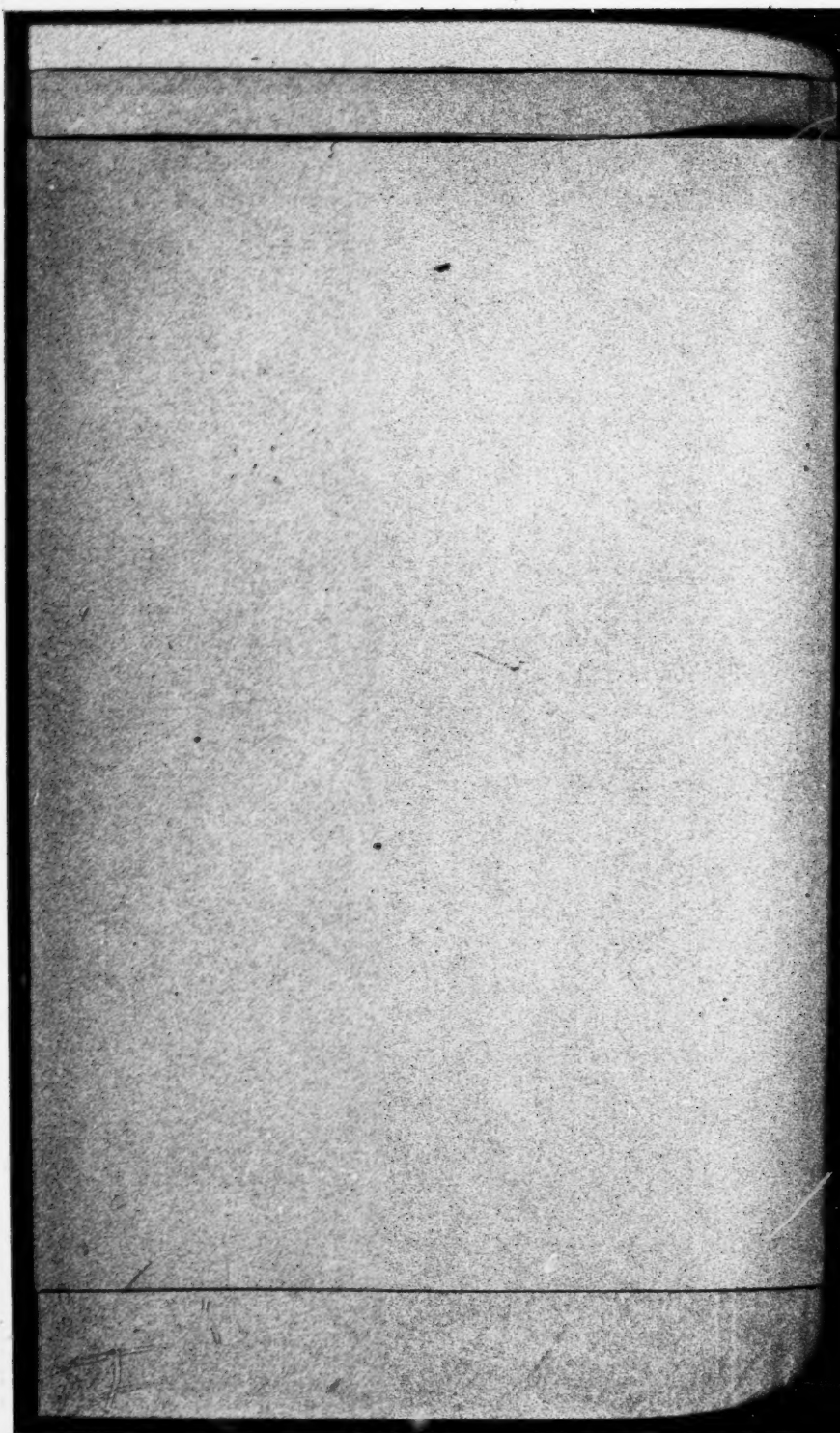
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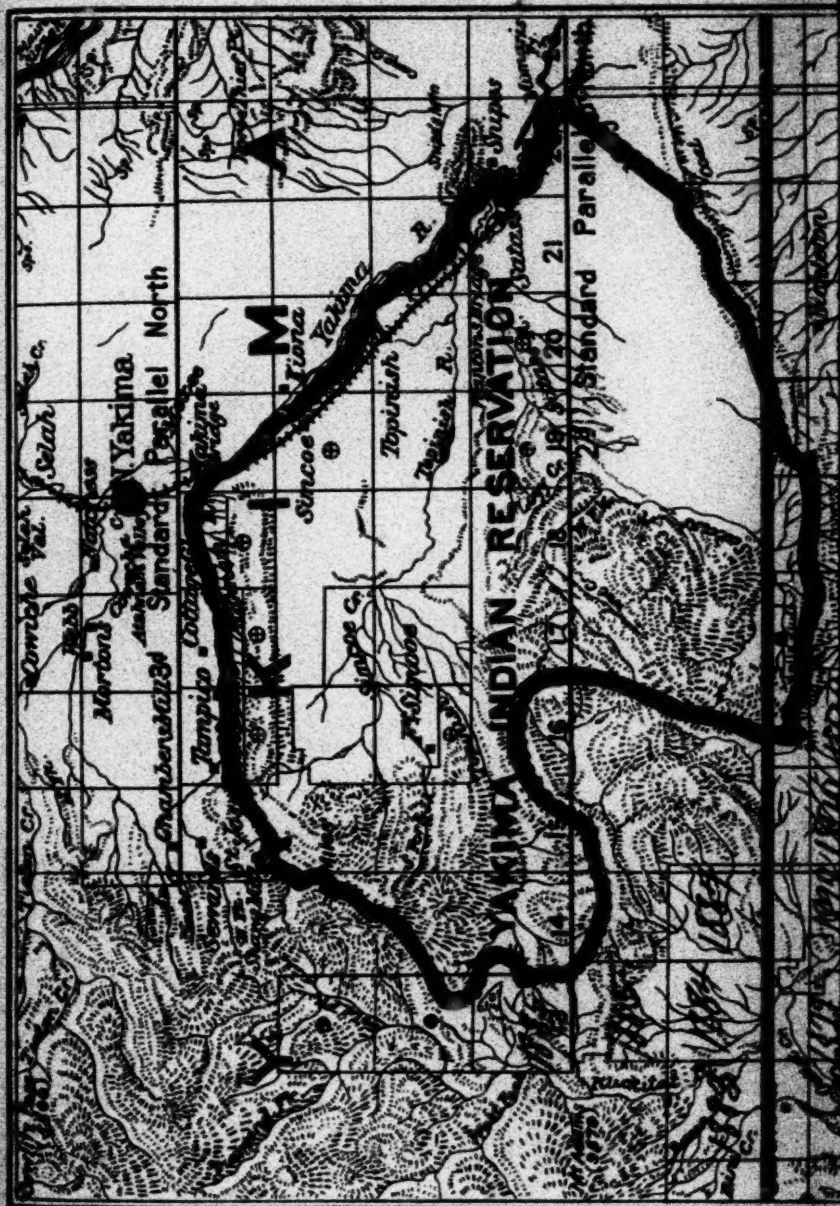
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Detailed Statement—Minnesota	"B"
Detailed Statement—North Dakota.....	"C"
Detailed Statement—Montana	"D"
Detailed Statement—Idaho	"E"
Detailed Statement—Oregon	"F"
Detailed Statement—Washington	"G"
General Summary—grants in their entirety.....	"H"

Very respectfully,

(Signed)

W. A. RICHARDS,
Commissioner.







Explanations
 U.S. Land Office
 Indian Reservation
 Townships not Subdivided



*Department of the Interior,
 General Land Office,
 Washington, D.C., Oct. 12, 1910*

I hereby certify that the attached diagram showing the Yakima Indian Reservation and adjoining townships thereto is a tracing from a part of a map issued by this office bearing the following title;

DEPARTMENT OF THE INTERIOR
 GENERAL LAND OFFICE
 HON. THOMAS H. CARTER, COMMISSIONER.

STATE OF WASHINGTON.

Scale of Miles

1891.

*Compiled from the official Records of the General Land Office and other sources
 under supervision of*

A.F. DINSMORE, Chief of Draughting Division G.L.O.

and is a correct copy of that portion which it purports to represent.



Frank D. Bennett
 Commissioner.

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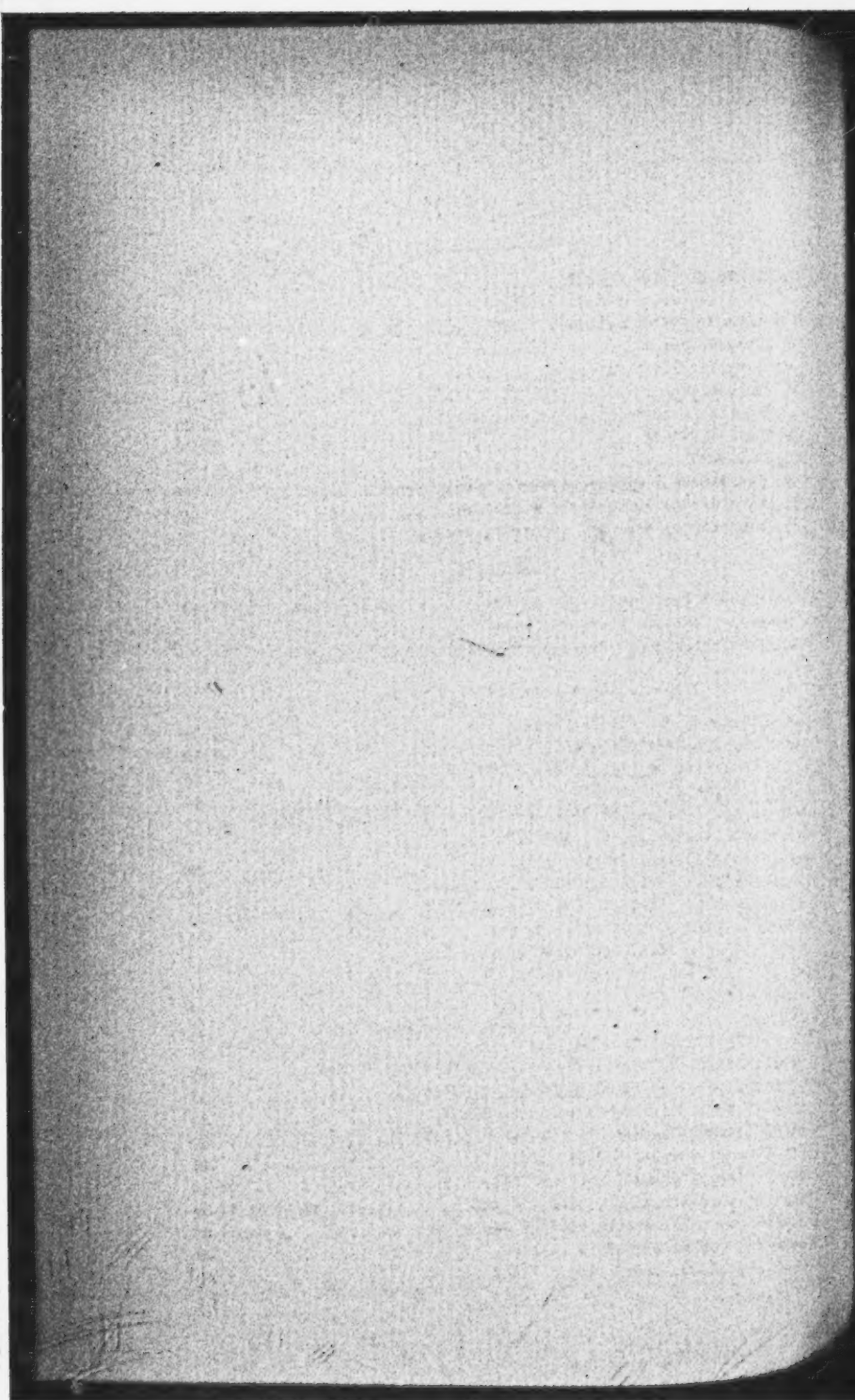
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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

THE NORTHERN PACIFIC RAILWAY COM- PANY ET AL.,	<i>Appellants,</i>	} No. 500.
<i>v.</i> THE UNITED STATES.		

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

[Except where otherwise indicated, references to boundaries, localities, natural objects, etc., are illustrated by the Barnard map, plaintiff's Exhibit No. 1.]

Viewed from the material side, this suit is essentially and exclusively for the protection of Indian wards of the Government. The United States, as the guardian of the Yakima Bands and having itself nothing material to gain and nothing material to lose, seeks to overcome the destructive consequences of an utterly erroneous and incompetent boundary survey, made without their acquiescence and against

their protest—a survey which has since been set aside by the Land Department and by act of Congress, but the effects of which, if allowed to stand, would rob the Indians of a very large part of their reservation. The Government has no reversionary claim whatever to the lands in dispute, having devoted them entirely to the Indians. Equitably the lands are, and (so far as concerns outsiders) they always have been, the Indians' property. The Government, therefore, in this litigation is seen to occupy purely the position of a guardian and trustee acting in discharge of its trust. Viewing the case from another standpoint, however, the Government has indeed a most serious interest of its own—an interest to keep its solemn treaty promises and to rectify the egregious blunders of its own agents where they operate to deprive helpless owners of their property rights without process of law.

The bill prays the annulment of patents issued May 10, 1895, and January 6, 1896, to the Northern Pacific Railroad Company, and March 5, 1901, and January 4, 1904, to its successor, the Northern Pacific Railway Company, purporting to convey certain described lands which the Government claimed, and both courts below emphatically found, have constituted parts of the Indian reservation for more than half a century. By the act of July 2, 1864 (13 Stat., 365; R., 631), Congress made to the railroad company its immense grant of "*public land*." So dilatory was that corporation that the map of definite location of its

line proximate to these lands was not filed till June, 1883. (R., 631.) As the act granted only "public land," to which the United States had "full title" and which had not been "reserved, sold, granted, or otherwise appropriated," etc., at the time when the line of the road was definitely fixed and a plat thereof filed with the Land Department, it did not of course affect this Indian reservation, and the Land Department was without jurisdiction to convey any part of the reserved area. The issuance of the patents was due entirely to the erroneous survey which had been made in 1890 and which purported to exclude from the reservation some 357,878 acres really belonging to it, including the tracts described in the patents.

The questions presented below were: First, whether the survey complained of was or was not erroneous. Second, whether, as to the tracts patented more than six years before suit, the statute of limitations (act of March 3, 1891, 26 Stat., 1095, 1099) was applicable. Third, whether the defense of *bona fide* purchase for value could avail to bar relief for the Indians. The first question involves certain questions of fact. Two courts, after careful consideration, have resolved all the above questions against the defendants, finding both the facts and the law as contended for by the Government. Both courts wrote comprehensive opinions reviewing the facts as revealed in the testimony and exhibits. (R., 502, 630.)

The treaty with the Yakimas (12 Stat., 951) was concluded at Camp Stevens, in the Walla Walla Valley, June 9, 1855. It was ratified by the Senate on

March 8, 1850, and proclaimed by the President on April 18, 1850. Isaac I. Stevens, then governor and superintendent of Indian affairs for the Territory of Washington, acted for the United States in the negotiations and signed the treaty as its representative.

The first article is as follows:

ARTICLE 1. The aforesaid confederated tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied and claimed by them, and bounded and described as follows, to wit:

Commencing at Mount Ranier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of Lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes ($119^{\circ} 10'$), which two latter lines separate the above confederated tribes and bands from the Oa-kine-kane tribe of Indians; thence in a true south course to the forty-seventh (47) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokance; thence down the Palouse River to its junction with the Moh-bah-ne-she, or southern tributary of the same; thence, in a southwesterly direction,

to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Perce Tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White banks," below the Priest's Rapids; thence westerly to a lake called "La Lac"; thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the western extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla Tribes and Bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

The next article is in part as follows:

ARTICLE 2. There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries, to wit:

Commencing on the Yakama River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south

and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out, for the exclusive use and benefit of said confederated tribes and bands of Indians, as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove to, and settle upon, the same within one year after the ratification of this treaty. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States; and upon any ground claimed or occupied, if with the permission of the owner or claimant.

Guaranteeing, however, the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named.

Article 3 contained this provision:

The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

Article 6:

The President may, from time to time, at his discretion, cause the whole, or such portions of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes and bands of Indians as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

Stevens was the first governor of Washington. He took charge in September, 1853, when the white population was exceedingly sparse, "and at once set to work to extinguish the Indian titles to land and to survey a route for a railway, which was later to become the Northern Pacific." (Enc. Britt., v. 28, pp. 357, 358.)

On April 30, 1857, he wrote from his headquarters at Olympia to the Commissioner of Indian Affairs an official letter in which he said:

I have, in compliance with the instructions of the department, the honor herewith to transmit a map of the Indian tribes of the Territory of Washington and of that portion of the Territory of Nebraska lying to the eastward as far as the mouth of the Yellowstone. I can vouch for the general accuracy of the map and of the Indian statistics given in it. (R., 316.)

This map is plaintiff's Exhibit No. 6, and appears in volume 2 of the record, page 582. It covers a wide territory and shows the boundaries of many Indian cessions and reservations, along with topographical and geographical features. It purports to mark the outline of the large area ceded by the Ya-hima treaty, and also within it, the area which the treaty set apart for the Indians. Appended to this brief is a reproduction of so much of this map as is regarded as material to the present controversy. Glancing at this the court will observe that the Cascade Mountains are represented (with substantial accuracy) as extending across the territory from south to north, from Oregon to the British possessions, and that the western boundary of the ceded area coincides with the axis of the range. Mount Adams is represented as rising from a spur extending from this axis or main range in a southeasterly direction. The Klickitat River is marked as head-

ing *west of this spur*, and as flowing thence southeasterly on the *westerly side of the spur and of Mount Adams*, and between them and the main ridge, to a confluence with the Wa-wum-chee River quite south of the region now in question.¹ The divide between the Satass and Columbia Rivers is indicated as lying considerably farther north than it is now known to be, with reference to Mount Adams. The south fork of the Attah-nam is made to reach the summit of the Cascades. The reservation lines are marked as extending up that stream *to the main ridge, far to the west of Mount Adams*; thence for some distance south on the ridge; thence southeasterly to the divide between the Satass and Columbia. The tract as thus delimited, is relatively narrow from north to south, due to a misunderstanding of the true situation of the Satass-Columbia divide (the draftsman placing it much too far to the north—see Barnard map), and due to the failure to bring the west line down the main ridge to the southeasterly slope of Mount Adams, as required by the treaty. Another old map, called the "White Swan map" (plaintiff's Exhibit 3, R. II, 585), was found among the archives

¹ The blue print of the Stevens map contained in the transcript differs from the original and from the certified copy used in evidence, in exhibiting the Klickitat River as heading *east of this spur and passing through it before traversing its westerly base*. We are at a loss to understand this peculiarity of the transcript copy. The copy in our appendix was printed from a fresh tracing from the original, in the Indian Office, and accords with the original quite accurately. If desired by the court, a photographic copy will be certified and filed.

of the Yakima Agency. It is substantially a reproduction of a portion of the Stevens map, including the reservation and some adjacent territory. (R., 134.)

Under date of September 19, 1861, William W. Miller, as superintendent of Indian affairs for the Territory of Washington, entered into a contract with Thomas F. Berry and James Lodge, surveyors, for the survey and marking of "all the boundaries of the Indian reservations east of the Cascade Mountains that are necessary to be surveyed and marked." Natural boundaries, "such as rivers, ranges of mountains, and so forth," were not to be surveyed. (R., 322.) By a letter dated September 10, 1861 (R., 318), the superintendent, Miller, referring to this contract, instructed Berry and Lodge to commence with the Yakima Reservation. He stated that by reference to the treaty it appeared only necessary to survey and mark the *southern* boundary, as the others were natural boundaries and sufficiently unmistakable for all practical purposes; and he directed the surveyors to proceed from the Yakima River westerly along the divide between the Satass and Columbia Rivers and along the divide between the Klickitat and Pisco Rivers until they arrived at the source of either the latter or the former, where they should terminate the survey. He added:

Should you find before arriving at the source of either of these rivers that the "divide" has assumed the character of a perfect

natural boundary, you will terminate your survey at the point where this description of boundary is attained.

It is important to note, first, that the superintendent regarded the other boundaries, namely, the Yakima and Attah-nam Rivers and the *main ridge of the Cascades*, as too definite and certain to require any survey, and conjoined the Klickitat-Pisco divide with the divide between the Satass and Columbia as factors of the *southern* boundary presumably indefinite and calling for artificial definition.

Berry and Lodge made a survey and returned the plat and field notes, as their contract required. The plat (R., 580) indicates that the south boundary was run to a point on or near the Klickitat River, and again lays down that stream as originating *on the south slope of Mount Adams* and flowing thence southeasterly. It also shows a tributary of the Pisco as heading near the east side of the mountain and a spur of hills projecting down between them southeasterly to meet the ridge constituting the Satass-Columbia divide. (See also record, 472.)

The original field notes of this survey have been discovered in the Indian Office since this case was heard by the Court of Appeals and are printed in full as an appendix to this brief, a certified copy having been filed with the clerk of this court. According to these, the line, as surveyed westerly from the Yakima River, was marked by posts set in mounds, often of stone, and sometimes with trenches and pits. They note the crossing of the "canon road

from Fort Simcoe to the town of Dallas [which] bears N. and S.;" also farther west the "military road from Fort Simcoe to the town of Dallas;" also, still farther west, the "road from Fort Simcoe to town of Dallas [which] bears N. and S." The locations of these three road crossings are indicated on the plat. The terminating monument is described as follows:

Set post in mound with trench and pits
10.00 chains east of a bald butte (the foot of
the butte) and close the survey—

which indicates that the surveyors did not come down to the Klickitat River, but stopped at the easterly base of a butte on its northerly bank.

This was the first survey of which there is any record evidence. There is other evidence, however, showing that all the boundaries had been roughly traced with the eye and that an attempt had been made to mark the southern line before the work of Berry and Lodge was done. "Stick Joe," an old Indian (dead when the depositions were taken, R., 151), told the witness Barnard in 1898, when the latter was making his survey, that about the year 1860 he accompanied a party of Government agents along a portion of the southern boundary. They left the old military wagon road at mile post 29 (of that road) where the road crossed the line of the reservation, and proceeded on that line, following a well-defined ridge, to Grayback Peak, on the summit of which a marked wooden post, set in the ground, was found. There one of the party, a surveyor or

Government agent, took out a telescope or some surveying instrument, and, sighting toward Mount Adams, pointed out a conical hump on the southeast slope and told the party that the line now went straight to that place. The party tried to proceed in that direction, but was obliged to turn back because of the precipitousness of the mountain side. (R., 81, 125.)

Chief Spencer, on the same occasion, told Barnard that Governor Geary, who succeeded Governor Stevens, had described the north and west boundaries as extending up the Attah-nam River from its mouth to the mouth of the south fork; thence up the south fork to its head; thence directly west to a high point, "just this side of Goat Rocks"; thence to a conical hump on the southeast side of Mount Adams. (R., 82.) Also, that he had accompanied "Mr. Thompson," Dr. Nowden, Indian agent at the time, and a clerk from the Warm Springs Agency over a portion of the southern boundary and that they blazed some trees at the junction of the Goldendale wagon road and the old Indian trail from Yakima—a place supposed to be on the line from Grayback Peak to the hump on Mount Adams. (R., 82, 83.) These statements were substantially repeated to Barnard by the two old Indians in 1899, Spencer then giving the name "Townsend" instead of "Thompson" and mentioning a Mr. Mason in connection with the trip. (R., 83.) Townsend was agent at the White Salmon Agency in 1858, and Mason

was Governor Stevens' secretary and acting governor of the Territory in 1859. (Ib.) In his deposition (R., 144 *et seq.*) Chief Spencer, after saying that Governor Stevens had assured him that the reservation would be marked out, describes an occasion, about two years after the treaty (R., 151), when three men, one of whom was "Townsend," the first agent appointed by Governor Stevens (R., 150), took him to the southwest corner, at the junction of the old Indian trail and the Goldendale Road, "cut out a notch on a tree," made a pile of rocks there, and, pointing to Mount Adams and Grayback, told him that the lines would run to them from that corner, and that Goat Rocks would be the northwest corner. The place thus indicated as the southwest corner falls some two miles south of a direct line from Grayback to the "hump." (R., 86.) The chief's statement regarding the blaze was strikingly corroborated by Barnard, who discovered a *blaze forty years old* upon one of two large pines there, both of which had been anciently blazed. (R., 79.) Barnard also found "a line of blazes about forty years old" extending from the vicinity of mile post 29 of the old military road eastward along the ridge to mile post 51 of the Schwartz survey. (R., 80.) To the same effect is the testimony of the Indians Olney (R., 161) and Abe Lincoln (R., 178). The court will note the great significance of these ancient blazes, extending westwardly along the ridge from mile post 51 to Grayback and of the coeval blaze on

the Goldendale Road, approximately in the line between Grayback and Mount Adams. Their existence is explicable upon no other theory than that they were made for the purpose of marking the reservation boundary. (R., 89.)

Accompanying the report of the surveyor general of Washington for the year 1865 is a map of that Territory, prepared by him officially, which also shows the Klickitat and Pisco Rivers as heading from Mount Adams, *the former on the west* and the latter on the east side. As this report and map constitute public documents which have long been printed and published pursuant to law, we assume that the court will be at liberty to refer to them, though they were not brought to the attention of the courts below. (Report of Commissioner of General Land Office, 1866, p. 137, and map.) So much of the map as covers the region now in question will be found copied in the appendix of this brief.

It appears that in 1886 a survey of a portion of the southern boundary, running $47\frac{1}{2}$ miles westwardly from the Yakima River, was made by one Harry J. Clark (R., 487, 470, 475), under the auspices of the Indian service. This did not reach the region now in controversy, but ended upon the Columbia-Satass divide.

We come now to the erroneous survey made by Schwartz in 1890—and, first, as to the occasion of it. As appears by a letter from the Commissioner of Indian Affairs to the Secretary of the Interior (R., 468), Agent Stobles (R., 483), of the Yakima Agency,

had prior to October 5, 1889, repeatedly recommended the survey of the southern and western boundaries, and by a letter of that date the commissioner had called upon him for a report of his reasons. The reply came from his successor, Priestly, who reported among other things that serious disputes concerning the location of the south boundary had resulted from the incursions of stock owned by white people, and that the monuments supposed to have been erected by Clark for $47\frac{1}{2}$ miles were difficult or impossible to find. (R., 483, 487.) Regarding the western boundary he said (R., 483):

The western boundary has, I believe, never been surveyed. It is described in the treaty as "along the main ridge of the Cascade Mountains, south and east of Mount Adams to the spur whence flows the waters of the Klickitat and Pisco Rivers." Which is the "main ridge" of the Cascade Mountains here referred to is a subject of disagreement. Indians claim the "main ridge" extends to the base of Mount Adams on the south and east. While white men with diverse interests claim the "main ridge" referred to to be farther east. No river known as the Pisco is shown on any map, and I have found no person, white or Indian, who has knowledge of any river of that name.

In his letter to the Secretary recommending a new survey, the commissioner says (R., 471):

The line to be rerun commences at a point on the main Yakama eight miles below the mouth of the Satass River and extends along

the divide separating the waters of the Satass from those flowing into the Columbia, a distance of $47\frac{1}{2}$ miles. From this point the line to be surveyed extends along said divide to the divide between the waters of the Klickitat and Pisco Rivers; thence along said divide to the spur whence flow the waters of said rivers; thence up said spur to the main ridge of the Cascade Mountains; thence northerly along said ridge, passing south and east of Mount Adams, to the southern tributary of the Attah-nam River.

The whole distance is estimated about 115 miles.

In his letter of December 3, 1889, Agent Priestly states that no river known as the Pisco is shown on any map, and that he has found no person, white or Indian, who has knowledge of any river of that name.

By comparing the diagram of a survey of the Yakama Reserve by Berry & Lodge, made in 1861, on file in this office, with the Land Office map of 1887, it is found that the river designated as the Toppenish on the map of 1887 is the Pisco referred to in the treaty. It is delineated on the diagram as rising about six miles nearly due east of Mount Adams and a very short distance north of second standard parallel.

I have the honor to recommend that the Commissioner of the General Land Office be directed to cause the south and west boundaries of the Yakama Reservation, as above indicated, to be resurveyed and surveyed,

the line to be marked at every half mile, where practicable, with conspicuous and durable monuments.

The influence of the Berry and Lodge map is manifest here.

May 20, 1890, pursuant to instructions from the Secretary (R., 466), the Commissioner of the General Land Office authorized the surveyor general to contract with a deputy surveyor for the resurvey of the south and west boundaries "as more particularly detailed in the letter of the Commissioner of Indian Affairs, dated May 9, 1890." (R., 474.)

The instructions given to the deputy by the surveyor general (R., 325) have been fully noticed by the courts below (R., 637.) Schwartz was told to begin at the 47½ milepost of the south boundary (established by Clark) and extend the line along the Satass-Columbia divide to the divide between the Klickitat and Pisco; thence along that divide to "the spur whence flow the waters of said rivers"; thence up said spur to "*the main ridge of the Cascade mountains*"; thence "*northerly along said ridge, passing south and east of Mount Adams* to the southern tributary of the Attah-nam River," etc. (R., 328.) He was also told to confer with the agent in charge of the Yakima Agency, and with other white persons and Indians familiar with the country, and obtain all information possible that would tend to a proper location and establishment of the boundary. (R., 329.)

There is no dispute about the correctness of the Schwartz survey where it follows the Columbia-Satass divide to the fifty-first mile. But the evidence shows conclusively that from that point a defined ridge extends westerly to Grayback Peak, the same being the ridge along which the line of ancient blazes mentioned above was proved to exist, and the ridge which has always been claimed by the Indians to constitute a part of their south boundary. (Barnard, R., 80, 81, 86, 103, 105; Olney, R., 158, 161, 163; Lincoln, 177, 178; Sylvester, R., 197; Schwartz, 215, 227, 241, 242.) It crosses the Klickitat, that river making a deep cut or gap in it (Sylvester, 197), and continues southwesterly till it joins Mount Adams and the main range. (Ib., 201.) In other words, the ridge west from Grayback projects into, or is met by, spurs coming down on the east and southeast sides of Adams. (See Schwartz, 228, 239, 240, 241, 242.) Schwartz did not follow this ridge toward Mount Grayback. He did not explore it. Indeed, he seems not to have paid any serious attention to the claim of the Indians concerning it, which he knew. His report on the subject is as follows (R., 464):

Up to the fifty-first mile corner there is no disagreement whatever regarding the location of the line, that I could learn. The line follows the top of a well-defined ridge acknowledged to be the true divide by both the whites and Indians with whom I conversed. The line in dispute is from the fifty-first mile "onward"

in a northerly direction. The Indians claim that the line passes along the top of a low ridge of hills bearing in a southwesterly direction and terminates at the Big Klickitat River and that this should be a continuation of their southern boundary; upon the western end of said ridge there is a round hill called Gray Back Mountain.

Thence it is claimed by the Indians the line bears in a northwesterly direction crossing the Klickitat River to the base of Mount Adams.

From a consultation with Mr. Stabler, the United States Indian agent at Fort Simcoe and from our understanding of the description of this boundary as given in the treaty of June, 1855 (U.S. Statutes, vol. [12, p. 951], 961), I adopt this as the intended course and continue the line along top of the divide which bears in a northerly direction between the waters of the Satus and those flowing into the Klickitat River.

The course actually adopted entirely ignores the Indians' claim, the ancient maps, and the most prominent calls of the treaty, namely, the main ridge of the Cascades and Mount Adams. That the divide between the Klickitat and Pisco (as now known) is not the main ridge is conceded. Schwartz says so in his report and deposition. (R., 465, 232.) Noel, the inspector who passed upon the survey, says the same. (R., 260.) The fact is brought out in the testimony repeatedly, and both lower courts have so decided. Schwartz, however, followed it northwestwardly from his fifty-first mile corner in preference to the

ridge leading to Grayback, which he saw (R., 215, 228), and ignored Mount Adams and the main ridge of the Cascades altogether, for no other reason than because, to do otherwise, would have meant crossing the Klickitat River (R., 465). We quote from his deposition (R., 235):

Q. You did not extend or run your line along the main ridge of the Cascade Mountains?

A. No, because I could not do it without crossing the Klickitat River and the treaty did not call for that.

He testified that he did not consider the Grayback Ridge at all, because it terminates in the Klickitat River and the treaty called for a continuous ridge from the head of the Attah-nam. (R., 225.) Schwartz held no standing employment under the Government. He was a private surveyor, designated as a deputy surveyor and thus authorized to take Government work by special contract. (R., 233.)

The survey was examined and approved by one Noel. His report (R., 490) and testimony (R., 247), however, demonstrate that his inquiry did not go beyond the inquiry of Schwartz, and that his approval was determined by the same misconception of duty which afflicted Schwartz's judgment. While admitting that he could see all of the peaks of the Cascades (R., 264) and would not mistake the Schwartz Ridge for the main ridge of those mountains (R., 259), he testified that he naturally accepted the former, as he "had been told to find the divide" between the

waters of the Klickitat and Pisco (R., 259), and that he had been "instructed to see whether he (Schwartz) followed that divide" (R., 263).

The work was formally accepted by the Commissioner of the General Land Office on October 21, 1891 (R., 496). There was no contest or hearing of any kind. Nowhere do we find evidence of an effort at once intelligent and conscientious to construe the treaty in the light of the topographical facts as they were understood when the treaty was made; nowhere any endeavor to ascertain the basis of the Indians' claim; nowhere an inquiry into, much less any knowledge of, what was done to give it practical expression. The inference is conclusive that the early markings were absolutely unknown to the persons who engaged in this proceeding. Their eyes, apparently, were blind to the fact that at the time of the treaty, and for some years afterward, the Klickitat River, or some stream that then bore the name, was believed to flow from the *west* side of Mount Adams. Actually, if not theoretically, the Schwartz survey was an *ex parte* matter, so far as the Indians were concerned. If it had run counter to the claims of white people, there would have been protests and hearings, the Commissioner and the Secretary of the Interior would have been enlightened, and the mistake would have been rectified. But, the claimants being Indians, there was nothing of the sort. Their general claim was known to their agent and the surveyor, but not inquired into. They continued to

complain, but the agent, who had failed to represent them when the error arose, remained complaisant while it was being consummated, until another agent took his place, when the protests fell on more intelligent, and possibly more conscientious, ears.

The evidence fully bears out the findings of the lower courts, that the Indians always claimed the larger boundaries. The trial court says (R., 525):

No other conclusion can be reached but that the Indians, whenever the question arose, always claimed the main ridge as forming the western boundary. * * * No act or admission of the Yakima Nation of Indians, or any of the tribes belonging to it, or of any individual member, is shown from which the conclusion can be reached that the Indians ever conceded the Schwartz line or admitted anything short of a line running to the main ridge of the mountains.

Indeed, there can be no sort of question that the claims and complaints of the Indians in regard to this matter were continuous and unabated both before and after the Schwartz survey. (R., 182 et seq.; R., 192.) It was not until May 10, 1895, that the earliest of the patents involved in this litigation was issued. (R., 11.) The Indian Commissioner's letter of April 12, 1898, shows that the complaints and wrongs of the Indians had been the occasion of an inspector's report in September, 1897 (R., 133), and the Commissioner there said that he was fully convinced from the reports and statements made to his office that the

Yakima Indians would not rest content until the boundary matter had been satisfactorily settled.

The present and accepted survey was begun by Mr. Barnard, then a topographer and now a geographer, of the United States Geological Survey, in the fall of 1898, and was completed by him in the fall of 1899 (R., 121). It was approved and submitted to the Secretary of the Interior by the Geographer and the Director of the Geological Survey January 16, 1900 (R., 120, 121). The Secretary approved it April 7, 1900 (R., 133), and submitted it to Congress on April 20 of that year (R., 109). And by the act of December 21, 1904 (33 Stat., 595), Congress branded the Schwartz survey as erroneous and accepted and confirmed the survey as made by Barnard.

The statutory provision is as follows:

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands embraced in the Yakima Indian Reservation proper, in the State of Washington, set aside and established by treaty with the Yakima Nation of Indians, dated June eighth, eighteen hundred and fifty-five: *Provided*, That the claim of said Indians to the tract of land adjoining their present reservation on the west, excluded by erroneous boundary survey and containing approximately two hundred and ninety-three thousand eight hundred and thirty-seven acres, according to the findings, after examination, of Mr. E. C. Barnard, topographer of the Geological Survey, ap-

proved by the Secretary of the Interior April seventh, nineteen hundred, is hereby recognized, and the said tract shall be regarded as a part of the Yakima Indian Reservation for the purposes of this act: *Provided further*, That where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by *bona fide* settlers or purchasers under the public-land laws, such rights shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit and in the construction of irrigation works on the Yakima Indian Reservation.

The work of Barnard and the evidence and conclusions upon which his results were based are so clearly explained in his official report (R., 121) and his testimony (R., 71 et seq.), and have been so fully considered in their opinions by both courts below, that no further review of them is here expedient. He ran a straight line westerly from the head of the south fork of the Attah-nam River to a prominent peak on the main range, which he called "Spencer Point"; another straight line southwesterly from there to the conspicuous spur or "hump" on the east slope of Mount Adams; another straight line from the "hump" to Grayback Peak; and closed the survey by following the ridge from Grayback Peak to Schwartz's fifty-first milepost. This employment of straight lines was actuated by the information given him by the old Indians, and the survey in that form

was adopted by Congress. Barnard, however, suggested as a logical alternative, that the line from the head of the Attah-nam should follow the ridge of the Cascade Mountains leading thence to the main ridge around the headwaters of the Klickitat, and proceed thence southerly along the main divide around or over Mount Adams to the "hump." The Indians would have gained by this, and would have gained still more if the line had been carried southeasterly down the spurs of Mount Adams to and thence along the ridge which extends southwesterly from Gray-back.

Before concluding this statement, we should add that all of the matters *in pais* upon which the Government laid stress to support its contentions have been found and accepted as true by both of the tribunals through which this litigation has passed. Those courts accepted the practically uncontradicted evidence of the Indian witnesses regarding the nature, the iteration, and the reiteration of their claims of boundary; regarding the lay of the lines as understood, not only by these tribesmen, but by the officials of the Government in the very early days before disputes were possible; regarding the pointing out of those lines and the marking of them by the blazing of trees in places consistent with the Barnard survey but wholly inconsistent with the survey of Schwartz. Other corroborative facts, such as the collection by Indian Agent Wilbur of rents from white people on account of the pasturing of their

stock within the disputed area and the annually recurring habit of the Indians of hunting and collecting berries on the slopes of the main range far to the west of the inferior ridge selected by Schwartz for the western boundary, were also accepted by the courts below. And what is most important, those courts found from the evidence that it was the intention of the treaty makers to bound the reservation on the west by the main ridge of the Cascade Mountains as it is known to be to-day, and must have been known then, and to carry that boundary to a prominent spur of Mount Adams located on its southeasterly side, and thence down the slope of that mountain to Mount Grayback, there to connect with the well-defined ridge (concerning the existence of which there is no dispute) extending from Grayback to the 51st milepost at the terminus of the Columbia-Sataw Divide—and further, in corroboration of this intention, that the Klickitat River was then supposed, as the early maps evince, to originate on the west of Mount Adams and the Pisco on the east thereof; which fact affords, in connection with the other evidence, a complete explanation of the apparent inconsistency of the treaty description.

Some 972.72 acres of the land involved, namely, all of section 1, T. 9 N., R. 13 E., and portions of sections 11 and 13 of that township fall within the reservation even as surveyed by Schwartz. (See plat, R., 617.)

ARGUMENT.

I.

The Schwartz survey was erroneous, and the Barnard survey includes no land to which the Indians were not entitled by the treaty.

In the face of the treaty, and in the light of the facts as established by the evidence *and as found by both courts below*, there is no possible way of sustaining the survey made by Schwartz.

The calls of the treaty are:

1. Along the Attah-nam River from the Yakima westerly to the forks.

2. Along the southern tributary of the Attah-nam from the forks to the Cascade Mountains.

3. Southerly along the *main ridge* of the Cascade Mountains, passing south and east of Mount Adams, to the spur whence flow the waters of the Klickitat and Pisco Rivers.

4. Down the said spur to the divide between the waters of the Klickitat and Pisco Rivers.

5. Along the said divide to the divide separating the waters of the Satass River from those flowing into the Columbia.

6. Along the last-mentioned divide to the Yakima River, at a point eight miles below the mouth of the Satass.

7. Thence up the Yakima to the mouth of the Attah-nam, the place of beginning.

There is no doubt concerning the first and last calls. Neither is there any uncertainty about the

location of the second and sixth—the southern tributary of the Attah-nam and the divide between the Satass and Columbia. We have, then, the entire eastern boundary and the major portions of the northern and southerly boundaries settled to begin with.

The second call instructs us to go up the southern tributary of the Attah-nam to the Cascade Mountains and the third tells us to proceed thence southerly along the *main ridge* of those mountains beyond Mount Adams.

Once concede that the "main ridge" of the treaty is the main ridge as it is known to be to-day, and these instructions need cause no embarrassment whatever. The gap of 20 miles now demonstrated to exist between that ridge and the head of the stream is easily explained by the fact that the stream was believed to extend to the ridge (see Stevens's map), and it may readily be bridged, either by a straight line, as was actually done, or, perhaps more logically, by pursuing the secondary ridge or spur of the *Cascade Mountains*, upon which the stream actually rises, northwesterly and westerly, until that ridge joins the main ridge. As the choice between these methods could not affect the defendants one way or the other, it is unnecessary to consider which would have been the more correct.

Now, we assert with perfect confidence that the "main ridge" intended by the third call of the description is the main ridge or divide of the Cascade Mountains as it was fashioned by the hand of nature

and actually exists. The Cascades form a mighty sierra reaching from the Columbia River to the British possessions and bisecting the State of Washington from north to south. The ridge of those mountains—that is, the sinuous but practically determinable line separating the waters flowing from them eastwardly from those flowing toward the west—affords a most convenient natural boundary for large bodies of land. Such boundaries have been employed through all history; and this particular one, as a glance at any modern map of Washington will show, has been availed of by the State for the purpose of marking off the counties lying east from those lying west of the range. We need not, then, be surprised to find (though the fact seems heretofore to have eluded notice in this case) that this great and convenient line of nature was adopted by the Government and the Indians in the treaty of 1855 as the western boundary (for the most part) of the immense area thereby ceded to the United States. Article 1 of the treaty described the tract thus relinquished as—

Commencing at Mount Ranier (sic), thence northerly *along the main ridge of the Cascade Mountains* to the point where the northern tributaries of Lake Che-lan, etc. [omitting the intermediate calls as immaterial to the present question]; thence down the Columbia River to midway between the mouths of the White Salmon and Wind Rivers to *the main ridge of the Cascade Mountains*; thence along *said ridge* to the place of beginning.

The Indians were not deeding acres or townships; they were yielding a principality over which, as a nation, they had been claiming ownership and exercising a *quasi* sovereign power. They were giving up what was *their* territory, as distinct from the territories claimed in that great region by the other bands or nations of their race—a territory comprised between the courses of great rivers and the reach of a mighty sierra. It was natural, usual, inevitable that such a territory should, by occupancy, tradition, and common consent have come to be separated from other like territories by the greater boundaries of nature, which alone befitted its vast dimensions. They referred to the main ridge of these mountains as one continuous, ascertainable thing. The inferior ridges or spurs, connected with but leading *away from* the main ridge, could not have entered into their calculations as forming any part of the boundary. Such a thing would be impossible and absurd.

As will be seen upon consulting any modern map of Washington, such as the map issued by the General Land Office, this main ridge of the Cascades passes through the Goat Rocks referred to in the evidence; thence southerly *over Mount Adams*; thence south-westerly and southerly to the Columbia; and Mount Rainier is situate considerably to the west of it, while the Wind and White Salmon Rivers lie both to the east of it. On the Stevens map the west boundary of the Yakima cession is plainly marked as running from the Columbia between the Wind and White

ing the ridge of the mountains through Mount Rainier to the northwest corner of the ceded tract. This line is intended unquestionably to mark the ridge which the contracting parties had in mind when they agreed upon the bounds of the ceded land. The map in this regard is substantially correct except in locating Mount Adams on a connecting ridge or spur extending southeast, which was a mistake, and in showing Mount Rainier as though it were (as Mount Adams turns out really to be) on the very line of the divide. The Stevens map was not based upon an actual survey. It was an approximation, designed to show in a broad way the results of the various Indian treaties. Whatever may be said of its accuracy in the smaller details (where it would necessarily be faulty), it is trustworthy where it naturally would be expected to be so, in indicating, rather than in defining, the lay of the grander boundaries, and in this regard it is evidence of the most satisfactory kind.

There could not be two "main ridges" of the Cascade Mountains. The treaty affords not even a suggestion that different ridges were in mind. The conclusion, therefore, is inevitable that the ridge intended to be designated by that expression as used in article 1 is the same as the ridge intended to be designated by the identical expression occurring in the second article a very few lines below.

All the maps and all the depositions relating to this subject agree absolutely that the "ridge" of the defense (which we will call "the Schwartz Ridge")

(Salmon Rivers to the mountains, and thence follow-) lies wholly east of the main ridge or divide of the Cascade Mountains. It is conceded that the main ridge extends between Mount Adams and the Goat Rocks (as shown on the modern maps of the State), exactly where Barnard located it, and 20 miles or more to the west of the secondary and wholly inferior divide (the "Schwartz Ridge") upon which the defendants rest their case. If the Schwartz Ridge were taken as a portion of the main ridge of the treaty cession, the southwestern boundary of the ceded territory would be utterly dislocated. But, if it can not be taken as a part of that boundary, it can not be taken as the western boundary of the reservation, since the latter was not distinct from the former, but a part of it—a fact placed out of question by the treaty itself and the strong corroboration afforded by the identification of these boundaries in the Stevens map.

The defendants' counsel close their eyes entirely to the first article of the treaty, and would have the court believe that the eyes of the parties who made it were in like manner blinded. In effect, the court is requested by them to assume that those parties, when they came to define the *reservation*, directed their minds not to the main ridge "as now known"—that is, not to the main ridge which they had just selected as the western boundary of the cession, and with which their attention was most seriously, indeed, primarily, engaged—but upon some other ridge, namely, the Schwartz Ridge, which would seem prominent, because near, to one viewing it from

the valleys on its eastern side. This line of argument, if such it may be regarded, calls for no reply. We are confident that there will be found in the record not a syllable of testimony, not even the slightest basis for the flimsiest inference, that the Schwartz Ridge was ever spoken or thought of by anybody as the main ridge of the Cascade Mountains. The only possible justification for adopting the Schwartz Ridge as any part of the boundary lies in the fact that upon it lies the divide between the Klickitat and Pisco Rivers, as they are now known. Herein lay the solitary argument which Schwartz and Noel were able to advance in excuse of their work. The treaty description (reading the calls in reverse order) required them, they said, to follow up that divide upon leaving the divide between the Satass and Columbia. This assumes, of course, that the divide they followed—on the Schwartz Ridge—is the object intended to be indicated by the fourth call; for, if it is not the thing so intended, it has no significance whatever. But this assumption operates at once and irremediably to destroy the fanciful theory that this Klickitat-Pisco divide, or Schwartz Ridge, is itself the "main ridge" of the Cascade Mountains, since the third call directs that the latter be followed southerly, passing south and east of Mount Adams to "the spur whence flow the waters of the Klickitat and Pisco Rivers," and the fourth call requires us to follow down that spur, all *before* we come to the divide between the waters of those rivers. Thus it will be seen that counsel's theory reduces the second,

third, and fourth calls of the description to one and the same thing, which is a *reductio ad absurdum* of the theory itself.

Having thus identified with certainty the "main ridge," obedience to the third call commands us to follow it to some spur south and east of Mount Adams, either by going over the top or by traversing the slopes of that mountain. We will not attempt to refine here. What is essential is that some point south and east of it be attained by following, as closely as possible, the divide of which it forms a part. The spur is further described as "the spur whence flows the waters of the Klickitat and Pisco Rivers." This is *falsa demonstratio*. That those who framed the description, in their ignorance of the lesser topographical features, supposed that there was a spur extending southeast from Mount Adams, with a stream called the "Klickitat" flowing along the west of it and a stream called the "Pisco" heading on its easterly side, is evidenced not only by the early maps but most convincingly by the description itself. That some extension of Mount Adams was intended as the natural object forming the terminus of this call is clear. That no part of the Schwartz Ridge could have been intended is certain beyond peradventure. The Schwartz Ridge lies 20 miles east of the main ridge and of Mount Adams; there is no spur at its head from which the Klickitat and Pisco rise; and it would be a physical impossibility to insert it in the boundary without leaving out entirely the prin-

cipal objects called for by the description, namely, the main ridge and Mount Adams.

The importance which the Schwartz ridge seems to possess, as the divide between the Klickitat and Pisco Rivers, is unreal and fictitious, since it is plainly not the divide to which the makers of the treaty intended to refer in the fourth and fifth calls of the description. The authors of the early maps regarded the Klickitat as a stream flowing west of Mount Adams and west of a spur projecting southeasterly therefrom. It is so marked on the Stevens and White Swan maps, on the Berry and Lodge map of 1861, and on the Surveyor General's map of 1865. They thought the Attahnam began on the main range, 20 miles west of where it actually does. Those who wrote the description in the treaty were under the same delusions. They were ignorant of the upper waters of the Attahnam, the Pisco, and the Klickitat. It is easy to understand how, deceived by distant appearances or misinterpreted information, they falsely conceived the last two streams as both heading from some spur on the southeastern side of the great mountain. There is actually a spur which (in the words of the trial court, R., 521) "Leads down from Mount Adams toward the divide which separates the waters of the Satass from those flowing into the Columbia." "It was assumed, apparently, that this ridge divided the waters of the Klickitat from those of the Pisco." (Ib.) As a matter of fact the Klickitat cuts through this ridge in a narrow and precipi-

tous gorge or canyon, the existence of which might easily be concealed to the distant viewer.

Whether the maker of the Stevens map was guided by the same misinformation which phrased the description or played merely the part of an interpreter of the description itself, there is no way of judging. It is certain, however, that the locations of Mount Adams and the main ridge were known. It is equally certain that the courses of the upper waters of the Klickitat and Pisco were *not* known—a thing which need excite no wonderment, since there are few topographical features less likely to be understood than the courses of these inferior streams and divides in a mountainous and broken country.

The result of these two certainties is to eliminate the Schwartz Ridge. Because that divide, by demonstration, was unknown to the treaty makers, and therefore could not have played any part whatever in the intention which they were seeking to express, it must be rejected for *all* purposes; to accept it for any, would be to top, deliberately, one error with another.

The only natural object corresponding with the fifth call of the description is evidently the blazed ridge extending from the fifty-first milepost of Schwartz westwardly to Mount Grayback and thence beyond the Klickitat River. The practical adoption of this ridge, as far west as Grayback, which was nearly contemporaneous with the treaty and long prior to the possibility of any controversy or dispute,

suffices to settle the south boundary as far as that mountain. From there Barnard ran his line to the "hump" on the east slope of Mount Adams. Here again is a resort to the early practical construction. It is objected to as arbitrary—particularly the straight line; and if the objection came from the Indians there would be reasons in its favor. They might very plausibly contend that the "hump" lies too far north to warrant its selection as a spur "south and east of Mount Adams," and that the boundary should be laid down the southeasterly slopes to connect with the westerly extension of the Grayback Ridge, and should follow that ridge east to the fifty-first milepost. This would have been greatly to their advantage, but it would not have assisted the defendants.

We agree with the lower courts that the Schwartz survey was very clearly erroneous and that the Barnard survey is objectionable only from the standpoint of the Indians.

It must not be forgotten that treaties with the Indians are always to be construed liberally in their favor in an endeavor to apply them as the Indians understood them. When this very treaty of 1855 was before it for construction, this court declared:

And we have said we will construe a treaty with the Indians as "that unlettered people" understood it, and "as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection," and counterpoise the ine-

quality "by the superior justice which looks only to the substance of the right without regard to technical rules." (119 U. S., 1; 175 U. S., 1.) How the treaty in question was understood may be gathered from the circumstances. (*United States v. Winans*, 198 U. S. 371, 380.)

The error was not merely the error of one who misjudged in weighing evidence; it was the error of one who, through ignorance, caprice, or what not, refused to hear or consider evidence. It was not the error of a judgment running counter to the weight of the evidence merely; it was the error of a judgment delivered in the face of all the evidence. Worse than this, it was an error brought about by a deliberate shutting of the eyes to the truth—by a conscious and deliberate refusal to inquire and judge, where inquiry and judgment were the plainest dictates of duty and, if fairly pursued and exercised, would have absolutely changed the result. Upon the facts as actually reported and admitted by Schwartz and Noel, their survey was erroneous and void as a matter of law. If they had performed the plain duty of examining the basis of the Indians' claim (which it is admitted they did not do), this error could only have become more palpable and clear.

For these reasons cases, like the Maxwell land grant case, in which this court was asked to reexamine disputed questions of fact which had been fairly examined and determined by the Land De-

partment, have, obviously, no application here. Furthermore, in the present case the survey has already been reexamined, found erroneous, and set aside by the department itself, and the act has been approved by Congress.

But it is argued that there are presumptions in favor of the older survey and presumptions attending the patents, and that the latter particularly are clothed with a pachydermous national dignity which is well-nigh impenetrable. We believe we appreciate the reasons which this court has so often assigned for protecting the Federal patents against light and ill-considered attacks. They are, first, that the patents are instruments of great solemnity; second, that the security of vast numbers of titles depends upon them; and, third, that their existence imports adjudication and finding by the Land Department of the facts which would authorize their issuance.

But the solemnity of a patent issued *ex parte* by the Land Department is certainly no greater than the solemnity of a treaty negotiated by a high official of the Government with a nation of Indians, approved by the President, ratified by the Senate, and promulgated by a solemn presidential proclamation. Indeed, the two things do not bear comparison. In point of importance and solemnity the first is relatively an insignificant thing. To hold that its effect is to rear up a presumption and a burden of proof sufficient to destroy the other, is to lose all sense of values in the estimation of governmental acts. Surely, the *vis inertiae* of the patents, due to this

solemn character, is offset in this case by the character of the opposing muniment—the treaty; surely, it is no less important to preserve a treaty than to preserve a patent.

As for the presumptions attending the patents, we fail to see how they can add anything to the presumption arising from the survey. The question of boundary was not involved in the patent proceedings. In those proceedings the correctness of the survey was assumed. The patents therefore do not evidence any adjudication concerning the boundary issue.

The presumption that the survey was correct was, of course, only *prima facie*. It was not merely overbalanced; it was actually destroyed by the evidence in the case. As soon as it became apparent that, in violation of their plain duty and of their written instructions, the surveyors had made no inquiry into the basis of the Indians' claim, and that, in gross misconception or disregard of the treaty, they had assumed it was their function at all hazards to avoid crossing the Klickitat River—as soon as this appeared, the foundation of the presumption collapsed.

This brings the case within the principle followed by this court in *Moffat v. United States* (112 U. S., 24), in which, however, the patents were attacked upon the ground of fraud and forgery. The court recognized the *prima facie* presumption attending the patent, but held that once it appeared that the register and receiver were guilty of dishonesty in the pro-

ceedings, so that the integrity of their official acts could not be relied upon, the presumption was swept away and no longer should be allowed any influence in determining the issues in the case. The court said, page 30:

The presumption as to the regularity of the proceedings which precede the issue of a patent of the United States for land is founded upon the theory that every officer charged with supervising any part of them, and acting under the obligation of his oath, will do his duty, and is indulged as a protection against collateral attacks of third parties. It may be admitted, as stated by counsel, that if upon any state of facts the patent might have been lawfully issued, the court will presume, as against such collateral attacks, that the facts existed; but that presumption has no place in a suit by the United States directly assailing the patent, and seeking its cancellation for fraud in the conduct of their officers. In such a suit the burden of proof is undoubtedly, in the first instance, on the Government to show a fatal irregularity or corrupt conduct on their part; but when a case is established which, if unexplained, would warrant a conclusion against them, the burden of proof is shifted, and they must show such integrity of conduct and such a compliance with the law as will sustain the patent. Its validity is, then, determinable, like any other controverted fact, upon the weight of evidence produced in support of and against their action.

II.

The defense of bona fide purchase.

This is an affirmative defense which must be strictly alleged. And the burden rests upon those who allege it to substantiate every allegation by strict proof. Thus in *Boone v. Chiles* (10 Pet., 177, 211) the court, with many citations of authorities which we here omit, expressed itself as follows:

The protection of such *bona fide* purchase is necessary only when the plaintiff has a prior equity, which can be barred or avoided only by the union of the legal title with an equity arising from the payment of the money and receiving the conveyance without notice and a clear conscience. It is setting up matter not in the bill; a new case is presented, not responsive to the bill, but one founded on a right and title operating, if made out, to bar and avoid the plaintiffs' equity, which must otherwise prevail. The answer setting it up is no evidence against the plaintiff, who is not bound to contradict or rebut it. It must be established affirmatively by the defendant independently of his oath. In setting it up by plea or answer, it must state the deed of purchase, the date, parties, and contents briefly; that the vendor was seized in fee, and in possession; the consideration must be stated, with a distinct averment that it was *bona fide* and truly paid, independently of the recital in the deed. Notice must be denied, previous to, and down to, the time of paying the money and the

delivery of the deed; and if notice is specially charged, the denial must be of all circumstances referred to from which notice can be inferred, and the answer or plea show how the grantor acquired title. The title purchased must be apparently perfect, good at law, a vested estate in fee simple. It must be by a regular conveyance; for the purchaser of an equitable title holds it subject to the equities upon it in the hands of the vendor and has no better standing in a court of equity. Such is the case which must be stated to give a defendant the benefit of an answer or plea of an innocent purchase without notice; the case stated must be made out; evidence will not be permitted to be given of any other matter not set out.

It was conceded by stipulation (R., 170) that certain specified tracts were purchased from the railway company by individual defendants "for value." But obviously this is not enough. Nothing was proved about notice or knowledge, nor was the amount of the consideration, the time of payment with reference to the conveyance, or the nature of the conveyance itself shown. For the railway company and the Mercantile Trust Co. a deposition was given (R., 305) by the general counsel of the former. We challenge its sufficiency upon the ground that the witness did not show himself qualified to prove the nonexistence of knowledge or notice; upon the ground that his evidence was based upon hearsay and mere assumption; and upon the ground that even

putting these criticisms aside, it fell far short of demonstrating with the requisite degree of certainty that either the railway company or the trust company was a purchaser for value and without notice. No one depending on this deposition could satisfy himself, for instance, that the make-up of the railway company was not such as to charge it with the same notice which its predecessor must, or at least may, have had. The consideration is not stated, nor the time of payment with reference to the alleged conveyance. The deposition shows actual notice in 1900 or 1901, before the issuance of some of the patents. The deponent testifies that a mortgage was given to the trust company and that certain bonds were issued and some sold. Nothing is said about notice to the trust company or bondholders, and we defy anyone to learn from the deposition whether or not either the mortgage or any of the bonds is still outstanding. In any event the mere existence of a mortgage could not bar relief in a case of this kind. (*Leavenworth, &c., R. Co. v. United States*, 92 U. S., 733, 753.) The mortgage might be, and without doubt is, amply secured on other property. A court of equity would marshal the security so as to save, if possible, such equities as are sought to be protected by this suit, if it recognized the mortgage at all.

Upon the whole we are disposed to believe that this defense has not been taken very seriously by the defendants' counsel, and that their lack of interest in it accounts for the practical failure of

the proofs. The reasons for this are not far to seek. The equity of a *bona fide* purchaser for value without notice will not prevail against a prior equal equity unless supported by the legal title. In this case the legal title is still held by the United States in trust for the Indians. The land had been set aside for the Indians by the supreme law of the land. The Land Department, therefore, was impotent to convey any part of it, and the issuance of the patents did not disturb the title. The patents were not merely voidable; they were absolutely void.

United States v. Winans, 198 U. S., 371.

Mullan v. United States, 118 U. S., 271.

United States v. Stone, 2 Wall., 525, 535.

Burfenning v. Chicago, St. Paul, & c., Railway Co., 163 U. S., 321.

In the *Winans* case this court was called upon to decide whether the fishery rights of the Yakima Indians, under article 3 of the treaty, *supra*, were destroyed by patents issued through the General Land Office and purporting to convey to the defendants absolute title to the land where the rights were exercised. The court held that the treaty gave the Indians rights in the land—the right to cross it to the river and the right to occupy it in the taking and curing of fish; that these rights were intended to be continuing rights against the United States and its grantees, and declared (p. 382):

The construction of the treaty disposes of certain subsidiary contentions of respondents. The Land Department could grant no exemptions from its provisions. It makes no differ-

ence, therefore, that the patents issued by the department are absolute in form. They are subject to the treaty as to the other laws of the land.

In the *Burfenning case*, *supra*, the court, after conceding the effect to be given to conclusions reached by the Land Department in matters within its jurisdiction, continued (p. 323):

But it is also equally true that when by act of Congress a tract of land has been reserved from homestead and preemption, or dedicated to any special purpose, proceedings in the Land Department in defiance of such reservation or dedication, although culminating in a patent, transfer no title, and may be challenged in an action at law. In other words, the action of the Land Department can not override the expressed will of Congress or convey away public lands in disregard or defiance thereof.

In *Morton v. Nebraska*, 21 Wall., 660 (reviewed and approved in the case last cited), the plaintiff held a patent, issued under the preemption act, for lands which were saline in character and noted as such on the field books, although the notes thereof had not been transferred to the register's general plats. That act declared that "no lands on which are situated any known salines or mines shall be liable to entry." It was held that the patent was absolutely void, the court saying (p. 674):

It does not strengthen the case of the plaintiffs that they obtained certificates of entry,

and that patents were subsequently issued on these certificates. It has been repeatedly decided by this court that patents for lands which have been previously granted, reserved from sale, or appropriated are void. The executive officers had no authority to issue a patent for the lands in controversy, because they were not subject to entry, having been previously reserved, and this want of power may be proved by a defendant in an action at law.

Apparently realizing this, opposing counsel fall back on the act of March 2, 1896 (29 Stat., 42, ch. 39) which provides, among other things:

But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchase is hereby confirmed.

This statute is part of the legislation for the adjustment of railway grants, beginning with the act of March 3, 1887 (24 Stat., 556, ch. 376), the purpose and meaning of which the court has considered upon a number of occasions.

The act of 1887 followed soon after the decision of this court in the case of *Kansas Pacific v. Dunmeyer* (113 U. S., 629), wherein it was held that lands to which homestead or preemption claims had attached prior to the filing of the railway company's map of location were excluded from its grant, and that no subsequent failure to perfect such claims, or abandonment thereof, could cause such lands to revert to the railway company. Prior to that time the Land De-

partment, in construing such grants, had long held that tracts so claimed would inure to the railway grantees upon failure or abandonment of the claims, and many such tracts had been patented or certified to the companies and in turn conveyed to persons who bought them in good faith, believing that the companies were the rightful owners. It was to remedy this situation that the acts of March 3, 1887, and March 2, 1896, *supra*, were passed.

United States v. Winona Co., 165 U. S., 463.

Wagstaff v. Collins (C. C. A., 8th Cir.), 97 Fed., 3.

In *Gertgens v. O'Connor* (191 U. S., 237, 242), speaking of the act of 1887, the court said:

We have more than once held that the entire statute was remedial in its nature and must be construed so as to carry out the intent of Congress and secure to the parties the intended relief. Primarily, the purpose was to secure an adjustment of the various land grants in aid of railroads. Much confusion had existed in the construction and administration of those grants. There had been conflicting decisions, and Congress attempted, *without displacing vested rights*, to do equity to all parties claiming interests in lands within these various grants. It did not purpose to merely define legal rights or prescribe new methods for their enforcement. The courts were competent under the law, as it stood, without additional legislation, to preserve such rights.

There were three parties whose interests and equities were to be regarded: First, the railway

company, the beneficiary of the grant; second, parties who had dealt with the railway company in reference to lands claimed by it to be within the scope of its grant; and, third, parties who had attempted to secure title under the settlement laws of the United States. With reference to the railway company, it is sufficient to say that Congress aimed to limit its acquisition of title to the amount of land which it had in fact earned by the construction of the road, and prescribed that the adjustment with it should be made in accordance with the rulings of this court; authorized actions to recover any lands improperly conveyed to the company, or, if the company had parted with them, the value thereof in money.

As to those who had dealt with the railway company, its evident purpose was to secure to them the lands they had contracted for, *in so far as it could be done without trespassing on the rights of settlers.*

The first section of the act of 1887 directed the Secretary of the Interior to adjust all railway grants, in accordance with the decisions of this court. The second directed proceedings to annul patents or certification of lands erroneously issued. The third gave protection and reinstatement to the original *bona fide* settlers under the homestead and preemption laws whose entries had been erroneously canceled by the Land Department in favor of the railroad companies; and provided that if such persons failed seasonably to renew their claims, the lands affected thereby should be disposed of under the public-land

laws "with priority of right to *bona fide* purchasers" thereof; that is, purchasers from the companies under the erroneous patents or certifications. (19 Op., 68.) And the fourth section gave to purchasers "in good faith" under such erroneous patents or certifications, of lands not claimed as aforesaid by original settlers or entrymen, opportunity to obtain patents running to themselves from the Government. We wish to point out distinctly that while the legislation was in large measure intended, as this court has said, "for the purpose of upholding the titles of parties who in good faith had purchased from railroad companies lands, which though supposed to be part of their grants, proved not to be so" (*United States v. Southern Pacific*, 184 U. S., 49, 52), nothing was farther from its intention than to sanction the displacement of existing rights, other than the technical right of the Government to recover the lands for itself. These laws expressly save the rights of original settlers and entrymen, subordinating to them the rights of purchasers under the erroneous and voidable patents, and they refer throughout only to lands which may be purchased and acquired under the general public land laws. In the *Winona* case, *supra*, the court said, page 481:

Our conclusion is that these acts operate to confirm the title to every purchaser from a railroad company of lands certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceedings of the Land Department, and notwithstanding the

fact that the lands so certified or patented were, by the true construction of the land grants, although within the limits of the grants, excepted from their operation, providing that he purchased in good faith, paid value for the lands, and *providing, also, that the lands were public lands in the statutory sense of the term and free from individual or other claims.*

In that opinion the court discussed also the limitation provisions of the acts of 1891 and 1896, respectively (set out *infra*), and as its words in that regard are particularly significant, we feel justified in quoting again (p. 475):

Congress evidently recognized the fact that notwithstanding any error in certification or patent there might be rights which equitably deserved protection, and that it would not be fitting for the Government to insist upon the letter of the law in disregard of such equitable rights. In the first place, it has distinctly recognized the fact that *when there are no adverse individual rights, and only the claims of the Government and of the present holder of the title to be considered*, it is fitting that a time should come when no mere errors or irregularities on the part of the officers of the Land Department should be open for consideration. In other words, it has recognized that, *as against itself* in respect to these land transactions, it is right that there should be a statute of limitations; that when its proper officers, acting in the ordinary course of their duties, have conveyed away lands which belonged to the Government such conveyances should, after the lapse of a

prescribed time, be conclusive against the Government, and this notwithstanding any errors, irregularities, or improper action of its officers therein.

Thus, in the act of 1891, it provided that suits to vacate and annul patents theretofore issued should only be brought within five years, and that as to patents thereafter to be issued such suits should only be brought within six years after the date of issue. Under the benign influence of this statute it would matter not what the mistake or error of the Land Department was, what the frauds and misrepresentations of the patentee were, the patent would become conclusive as a transfer of the title, *providing only that the land was public land of the United States and open to sale and conveyance through the Land Department*. The act of 1896 extended the time for the bringing of suits for patents theretofore issued for five years from the passage of that act.

The opinion continues (pp. 476, 477):

But limitation was not the only protection given. The act of 1896, which extended the period of limitation, followed such extension with this provision: "But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed."

* * * We are of the opinion that Congress intended by the sentence we have quoted from the act of 1896 to confirm the title which in this case passed by certification to the State. It not only declares that no patents to any lands held by a *bona fide* purchaser shall be

vacated or annulled, but it confirms the right and title of such purchasers. Given a *bona fide* purchaser, his right and title is confirmed, and no suit can be maintained at the instance of the Government to disturb it.

In another case against the same company (165 U. S., 483), where it appeared that the original pre-emptioner maintained his possession and filing until after the land had been deeded by the railway company, it was held that the purchaser from the company was charged with notice by the pre-emptioner's possession, and was therefore not protected as a *bona fide* purchaser by the acts of 1887 and 1896. The court said (p. 486):

Such a purchaser can not claim to be one in good faith if he has notice of facts outside the records of the Land Department disclosing a prior right. The protection goes only to matters anterior to the certification and patent. The statute was not intended to cut off the rights of parties continuing after the certification, and of which at the time of his purchase the purchaser had notice. Only the purely technical claims of the Government were waived.

Plainly, none of the defendants can even plausibly pretend to be a *bona fide* purchaser in the peculiar sense of those enactments. Not only were they put on notice of the treaty, but they dealt concerning lands the patenting of which either to a railway company or to individuals was never authorized or intended by Congress, and which could not be pat-

ented to them without destroying rights already existing.

Finally, the claim of the trust company is disposed of by the first *proviso* of section 4 of the act of 1887, declaring that no mortgage or pledge of lands by a railway grantee shall be considered as a sale.

III.

Statute of limitations.

Before we come to consider the true application of this statute let us dwell for a brief space upon the nature of the equitable rights which it is invoked to destroy. In return for a vast cession, this Government by a solemn treaty agreed to reserve, set apart, and, so far as necessary, survey and mark out, the land in controversy, for the occupation and "exclusive use and benefit" of the Indians. "Nor," it said, "shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent." Also, by article 6, it held out the hope, if it did not actually promise, that in course of time allotments in severalty would be made of the reserved land to individuals and families for their permanent homes. Granted, for the sake of argument only, that there was in these assurances no potency to preserve them against the subsequent perfidy of the Government, should it choose to act perfidiously toward those who had confided in its honor, does not the possession of the power of

oppression afford in itself the very strongest reason why the Government, and especially its courts of justice, should strain to avoid the odium of exercising the power? In *Leavenworth &c. R. Co. v. United States* (92 U. S., 733, 742) this court reaffirmed its previous declarations that—

“The Indians are acknowledged to have the unquestionable right to the lands they occupy, until it shall be extinguished by a voluntary cession to the Government,” and declaring that right “to be as sacred as the title of the United States to the fee.”

It said (p. 746):

That lands dedicated to the use of the Indians should upon every principle of natural right be carefully guarded by the Government and saved from a possible grant is a proposition which will command universal assent.

In *Minnesota v. Hitchcock* (185 U. S., 373, 389) it was held that—

The Indians' right of occupancy has always been held to be sacred; something not to be taken from him except by his consent, and then upon such consideration as shall be agreed upon.

If this be true of the Indians' right of occupancy, unfortified by the promise and faith of the Nation plighted in a written treaty and founded upon a valuable consideration, how much more sacred and compelling does the right become when the promise and the plighted faith are added to its support.

It was necessary, especially in the beginnings of our national history, to hold that surrender by the Indians might be lawfully compelled. To concede them the right to impose their own terms would not have consisted with the national destiny or the fundamental relations between a dominant sovereignty and a conquered people. But this qualification of right is present only when those relations are present—between the Indians and the Government. What the Government has yielded to them is *theirs*—absolutely theirs—until the Government itself shall see fit to assume it with their consent or deprive them of it by compulsion. In this case we are not required to consider the question whether the equity of the Indians had passed within the protection of the Constitution; for in so far as third parties are concerned, it was just as perfect and impregnable as any constitutionally vested right, and in so far as the Government is concerned, the equity was protected by all the intentions and presumptions which distinguish right from wrong. As against the claims and pretensions of these defendants, the Indians are in no worse position than they would be if it were conceded that the Government had granted them an equitable estate. They are indeed in a better position than would be occupied by white men to whom the Government had conveyed the entire beneficial ownership, retaining in itself the bare legal title; for the Indians, not having the capacity to protect their right, are free from any possible imputation of laches.

Section 8 of the act of March 3, 1891, "An act to repeal timber-culture laws and for other purposes," as amended by another act of the same date, provided among other things:

That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents. (Ch. 561, 26 Stat., 1095, 1099.)

The act of March 2, 1896 (ch. 39, 29 Stat., 42), enacted, *inter alia*:

That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents and the limitation of section 8 [of the act of 1891, *supra*] and amendments thereto is extended accordingly as to the patents herein referred to. But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed.

The act of 1891 is a lengthy statute, having distinctively to do with the disposition of "public lands"—that is, lands owned by the United States and subject to sale or other disposition under general

laws, and, of course, not already dedicated to others. Congress was careful to provide in its tenth section:

That nothing in this act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands, or of land ceded to the United States to be disposed of for the benefit of such tribes. (26 Stat., 1099.)

We have already pointed out that the act of 1896 was part of the legislation for the adjustment of railway grants. In both acts, Congress was legislating concerning public lands owned absolutely by the United States and subject to private acquisition under its dispositive laws. There is no reason for supposing an intention to cripple the power of the Government to set aside patents which, through error, and without authority or jurisdiction in the Land Department, might be issued for lands which, by express direction of a law enacted by Congress itself, or of a treaty concluded by the President and Senate, had already been set aside and permanently reserved for public uses or for the benefit of Indian tribes. The implication is directly to the contrary, and the general terms of the statutes must be restrained accordingly in avoidance of such absurd and dangerous results. When it is considered that patents flow forth from the General Land Office in multitudes, that many if not most of them are approved upon the recommendation of subordinate officials, and that the statute of limitation, when it applies, operates not merely to bar the remedy, but also to confirm the title which the patents purport

to convey (*United States v. Chandler-Dunbar Co.*, 209 U. S., 447), the improbability that Congress could have intended such an application here becomes manifest.

In the *Winona Company's case*, first *supra*, this court, foreseeing the danger of the contrary view, was careful to speak of these statutes as applicable only when the attack is made by the United States for its own benefit and in respect of lands grantable under the public-land laws. And in the *Chandler-Dunbar case*, Mr. Justice Holmes, citing that part of the opinion in the *Winona case*, took pains to point out that the land involved in the case before him "was public land of the United States and in kind open to sale and conveyance through the Land Department." In the opinion of the Circuit Court of Appeals it is said of the limitation:

Doubtless this would not extend to lands reserved by treaty, and probably not to lands which had at the date of the statute been taken out of its power of disposition in favor of other parties who had acquired contingent interests therein, though the prospective part of the statute, not quoted above, might perhaps cover such lands if they should fall back into its absolute control. *United States v. Chandler-Dunbar Co.*, 152 Fed., 25, 29.

It is true that in that case the patent was claimed to be void because the land, many years before the patent, had been reserved by the President in anticipation of possible public uses. But no public use had, in fact, been made of it, and the reasons for the reser-

vation itself had come to amount to a mere technicality, surviving unnoticed in the records of the department. The case was clearly one which fell within the spirit of the statute, and one which offered no convincing appeal to a court of chancery.

The distinction between that case and the case at bar is too obvious for comment. Applied to this case the limitation, far from dispensing a "benign influence," would consume with a monstrous injustice and breach of faith. In *Leavenworth, etc., Railroad Co. v. United States* (92 U. S., 733) this court held that, as a transfer of any part of an Indian reservation secured by a treaty would involve a gross breach of the public faith, the presumption was conclusive that Congress never meant to grant it. It reaffirmed the doctrine announced in *Wilcox v. Jackson* (13 Pet., 398) (involving a military reservation), where it was held that wherever a tract of land has been once appropriated for any legal purpose, from that moment the land so appropriated becomes severed from the mass of public lands, and that no subsequent law, proclamation, or act of Congress, should be construed to operate upon it, and said, that the rule there announced applied with even more force to Indian than to military reservations, since the latter were the absolute property of the Government, while the former were subject to the rights of the Indians; and that Congress could not be supposed to grant them by a subsequent law, general in its terms, in the absence of specific language leaving no room for doubt of the legislative will to do so.

The statute of limitations should receive a strict construction. Its general terms should not be permitted, *upon the theory that they operate to create a grant*, to sweep away the rights of these helpless Indians any more readily than should the general terms of a granting act, such as was involved in the *Leavenworth Company's case*.

We notice in the opposing brief (pp. 50, 51) an attempt to differentiate between "the Government's own right to the fee" and the interest which it holds for the Indians. If in sound theory such a distinction were allowable, and if it were held that the defendants have succeeded to the Government's title, it would thereupon become the duty of the court to order a decree upholding the patents but adjudging that the lands shall be held in trust and subject to the right of perpetual use and occupation which the treaty in effect guarantees to the Indians. But such a distinction would be absurd. Private persons and railway corporations could not succeed to the relations which the treaty established between the Indians and the United States. The Government did not retain the fee for itself presumably. On the contrary, it must be presumed that Congress intended to make use of it ultimately for the Indians' benefit. Their rights therefore involve the fee as well as the possession.

United States v. California and Oregon Land Company (192 U. S., 355) seems to be cited in the defendants' brief as authority for the general proposition

that lands which the United States holds for the Indians will be affected by the same laws and presumptions as lands which it holds for itself.

In that case it was held that the United States, having once sued unsuccessfully to annul certain patents upon the ground that the wagon-road grant under which they were issued was forfeited, was estopped by the decree to sue again to annul some of the same patents upon the ground that they improperly included lands belonging to an Indian reservation. The relief sought was the same in both cases. The parties were the same. The only difference lay in the reasons assigned for the relief. The majority of the court decided that the distinction of reasons did not amount to a distinction of causes of action. The United States was regarded as the owner of the fee, and the interest of the Indians was identified with the interest of the United States for the purposes of litigation. It did not appear in that case, as it does in this, that by act of Congress the full beneficial ownership had been in effect transferred to the Indians before the suit was brought, and the case might plausibly be distinguished on that ground. But the obvious ground of distinction is, that in our case we have to do with the question whether Congress intended certain laws designed to place restrictions upon the right of the Government to recover public lands to apply in respect of lands belonging to Indian reservations. The distinction

between these two classes of lands plainly and necessarily exists, with corresponding reasons for distinctions in the applications of the acts of Congress, whether there be or be not distinctions under the general principles of law in the status of the United States as a party in court when it seeks to recover the one and when it seeks to recover the other class of land.

Whether the act concerning *bona fide* purchasers, or the statute of limitations, is applicable in such a case as this depends upon the express or implied intention of Congress.

The decree should be affirmed.

ERNEST KNAEBEL,
Assistant Attorney General.
S. W. WILLIAMS,
Of Counsel.

APPENDIX.

Field notes of the survey of the Yakama Reservation, in the Territory of Washington, by Thomas F. Berry and James Lodge, United States deputy surveyors, under their contract with William W. Miller, superintendent of Indian affairs for Territory of Washington, dated September 9, A. D. 1861.

[Survey made in 1861.]

NOTE.—The south boundary only was surveyed, in accordance with the instructions of the superintendent. The other boundaries are defined naturally.

Commenced, Monday 30th Sept., 1861, at the mouth of the Sataas River on the right bank of the Yakama River, with variation 21 degrees E.

Thence—

S. 19 degrees W., 76.00 chains.

S. 11 degrees W., 30.00 chains.

S. 28 degrees E., 20.10 chains.

S. 86½ E., 12.50 chains.

S. 65½ degrees E., 72.50 chains.

East, 34.00 chains.

S. 61½ degrees E., 111.50 chains.

S. 68½ degrees E., 111.00 chains.

S. 87½ E., 172.40 chains to a point S. 26½ W. 39.50 chains of bank of Yakama River.

Set post on right bank of the Yakama River; made mound with trench and pits as per instructions.

Thence S. 26½ degrees W.

80.00 Set post in mound with trench and pits.

160.00 Set post in mound with trench and pits.

240.00 Set post in mound with trench and pits.

320.00 Set post in mound with trench and pits.

400.00 Set post in mound with trench and pits.

480.00 Set post in mound with trench and pits.

560.00 Set post in mound with trench and pits.

640.00 Set post in mound with trench and pits.

720.00 Set post in mound with trench and pits.

800.00 Set post in mound with trench and pits.

880.00 Set post in mound with trench and pits.

Thence S. 82 degrees W.

80.00 Set post in mound with trench and pits.

Thence S. 53 degrees W.

80.00 Set post in mound with trench and pits.

160.00 Set post in mound with trench and pits.

Thence S. 77 degrees W.

80.00 Set post in mound with trench and pits.

160.00 Set post in mound with trench and pits.

Thence S. 76 degrees W.

80.00 Set post, made mound with trench and pits.

Thence S. 74 degrees 30' W.

80.00 Set post in mound with trench and pits.

160.00 Set post in mound with trench and pits.

Thence N. 82 degrees W.

80.00 Set post in mound with trench and pits.

Thence S. 65 degrees W.

45.00 Set post in mound of stone.

Thence N. 85 degrees W.

71.00 Set post in mound with trench and pits.

Thence S. 60 degrees W.

30.00 Set post in mound of stone.

Thence N. 85 degrees W.

51.00 Set post in mound of stone.

Thence S. 33 degrees 30 minutes W.

55.00 Set post in mound of stone.

Thence N. 89 degrees W.

80.00 Set post in mound of stone.

Thence S. 71 degrees W.

80.00 Set post in mound of stone.

Thence S. 38 degrees 30 minutes W.

28.50 Set post in mound of stone.

Thence S. 71 degrees 30 minutes W.

40.00 Set post in mound of stone.

Thence N. 83 degrees 30 minutes W.

80.00 Set post in mound of stone.

Thence S. 45 degrees W.

40.00 Set post in mound of stone.

Thence N. $76\frac{1}{2}$ degrees W.

80.00 Set post in mound with trench and pits.

Thence N. 82 degrees 30' W.

73.00 Set post in mound of stone.

Thence S. 68 degrees 30' W.

30.50 Set post in mound of stone. Timber pine.

Thence N. 75 degrees W.

52.00 Set post in mound of stone.

Thence S. 30 degrees W.

80.00 Set post in mound of stone. Open pine woods.

05.00 To camp in gulch; set post from which a pine 25 inches thro' bears
N. 67 degrees W. 37 links; a pine 30 inches thro' bears S. 57 de-
grees E. 92 links.

Thence S. 5 degrees 30' W.

52.50 Set post in mound with trench and pits.

Thence S. $65\frac{1}{2}$ degrees W.

23.50 Set post in mound of stone.

Thence S. $82\frac{1}{2}$ degrees W.

59.00 Set post in mound of stone. Open pine woods.

Thence S. 65 degrees W.

50.00 Set post in mound of stone.

Thence S. 83 degrees W.

60.50 Set post in mound of stone. Open pine woods.

Thence N. 73 degrees W.

80.00 Set post in mound with trench and pits. Open pine woods.

Thence S. $75\frac{1}{2}$ degrees W.

38.00 Set post in mound of stone. Open pine woods.

Thence N. 84 degrees W.

80.00 Set post in mound of stone. Open pine woods.

Thence N. $86\frac{1}{2}$ W.

80.00 Set post from which a pine 25 inches thro' bears S. 85 degrees W. 85 links; a white fir 20 inches thro' bears N. 74 degrees E. 120 links.

Thence N. $71\frac{1}{2}$ degrees W.

60.00 Set post in mound of stone; pine timber.

Thence S. $85\frac{1}{2}$ degrees W.

31.00 Set post in mound of stone; pine timber.

Thence S. 31 degrees W.

25.00 Set post in mound of stone.

Thence S. 55 degrees W.

39.00 Set post in mound with trench and pits. Open pine woods.

Thence S. 76 degrees W.

47.50 Set post in mound of stone; no timber.

Thence S. $39\frac{1}{2}$ degrees W.

26.00 Set post in mound of stone. Open pine woods.

Thence N. 85 degrees W.

36.50 Set post in mound of stone.

Thence N. $35\frac{1}{2}$ degrees W.

12.00 Set post in mound of stone.

Thence N. 84 degrees W.

13.50 Set post in mound with trench and pits. Oak and pine timber.

Thence N. 40 degrees W.

5.00 To Canon Road from Fort Simcoe to the town of Dallas, bears N. and S.

13.50 Marked a pine 18 inches thro' for a corner from which a pine 16 inches thro' bears S. 30 degrees W. 19 links; an oak, 8 inches thro', bears N. 80 degrees E. 12 links.

Thence N. 51 degrees W.

39.00 Set post in mound of stone. Open pine and oak woods.

Thence N. 83 degrees W.

23.00 Set post in mound of stone. Open pine & oak woods.

Thence N. 53 degrees W.

25.00 Set post in mound of stone.

Thence N. 74 degrees 30' W.

30.00 Set post in mound of stone.

100.00 Set post from which a pine, 10 inches thro', bears S. 6 degrees W. 5 links; a fir, 12 inches thro', bears N. 5 degrees E. 24 links. Open pine and fir timber.

240.00 Set post in mound of stone.

Thence S. 87 degrees W.

76.00 Set post in mound of stone.

Thence S. 59½ degrees W.

42.00 Set post, with mound and trench and pits. Open pine woods.

Thence N. 52½ degrees W.

38.00 Set post in mound, with trench and pits.

Thence S. 70 degrees W.

26.00 Set post in mound of stone.

Thence N. 70 degrees W.

62.00 Set post in mound of stone.

Thence west.

55.00 Set post in mound, with trench and pits.

Thence N. 60½ degrees W.

23.00 Set post in mound, with trench and pits.

Thence S. 85 degrees W.

28.50 Set post in mound, with trench and pits.

Thence S. 25 degrees W.

30.00 degrees. Set post in mound with trench and pits.

Thence N. 70 degrees W.

70.50 Set post in mound with trench and pits.

69

Thence N. 55 degrees E.

23.00 Set post in mound with trench and pits.

Thence N. 51 degrees W.

55.00 Set post in mound with trench and pits.

Thence north.

30.00 Set post in mound with trench and pits. Pine and fir timber.

Thence N. 22 degrees 30 minutes W.

53.25 To military road from Fort Simcoe to the town of Dallas, and set post in mound with trench and pits.

Thence N. 5 degrees E.

63.50 Set post in mound with trench and pits.

Thence N. 80 degrees W.

75.00 Set post in mound of stone.

Thence N. 80½ degrees W.

80.00 Set post in mound with trench and pits.

106.00 Set post in mound of stone.

Thence S. 49½ degrees W.

60.00 Set post in mound with trench and pits.

Thence S. 71 degrees W.

84.00 To road from Fort Simcoe to town of Dallas bears N. and S.

80.00 Set post in mound with trench and pits.

Thence S. 89 degrees W.

56.50 Set post in mound with trench and pits.

Thence S. 48 degrees W.

30.00 Set post in mound with trench and pits.

Thence N. 83 degrees W.

80.00 Set post in mound with trench and pits.

123.00 Set post in mound with trench and pits.

Thence S. 78½ degrees W.

60.50 Set post in mound with trench and pits.

Thence S. 63½ W.

20.00 Set post in mound with trench and pits.

Thence N. 75 degrees W.

23.00 Set post in mound with trench and pits.

Thence S. 70 degrees W.

26.00 Set post in mound with trench and pits.

Thence N. 89 degrees W.

27.50 Set post in mound with trench and pits.

Thence N. 49 degrees W.

31.00 Set post in mound with trench and pits.

Thence N. 76 degrees W.

31.50 Set post in mound of stone.

Thence S. 75 degrees W.

34.50 Set post in mound with trench and pits.

Thence S. 26 degrees W.

41.85 Set post in mound with trench and pits 10.00 chains east of a bald butte (the foot of the butte) and close the survey.

[Recapitulation omitted.]

GENERAL REMARKS.

The above survey was made with Burts improved solar compass. The variations are from 21 degrees to 21½ degrees east. The posts are all numbered; commenced with the post on the right bank of the Yakama River (the right bank, when looking downstream) as No. 1.

THOMAS F. BERRY,
JAMES LODGE,
Surveyors.



570 *The Northern Pacific Railway Co. et al.*

which exhibits I transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, pursuant to the order of Court of date October 27, 1910, so to do.

I further certify that the cost of preparing this certificate amounts to the sum of Seventy Cents, which sum I have received from the defendant and appellant, The Northern Pacific Railway Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court, at the City of Spokane, in the Eastern District of Washington, in the Ninth Circuit, the 10th day of November, A. D. 1910, and the Independence of the United States of America the One Hundred and Thirty-fifth.

[Seal]

FRANK C. NASH,
Clerk, U. S. Circuit Court for the Eastern District
of Washington.

[Endorsed]: No. 1916. United States Circuit
Court of Appeals for the Ninth Circuit. Filed Nov.
18, 1910. F. D. Monckton, Clerk.



No. 1918

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRANSCRIPT OF RECORD.

(IN THREE VOLUMES.)

NORTHERN PACIFIC RAILWAY COMPANY,
vs. MERCANTILE TRUST COMPANY, HENRY
BEACHEL and FLOREN BEACHEL, Hs. Wm.
MINORS BADLEY and FLORENCE C. EADLEY,
vs. Wm. O. D. WISE and ——— WISE, Hs. Wm.
R. D. McCULLY.

Appellants

vs.

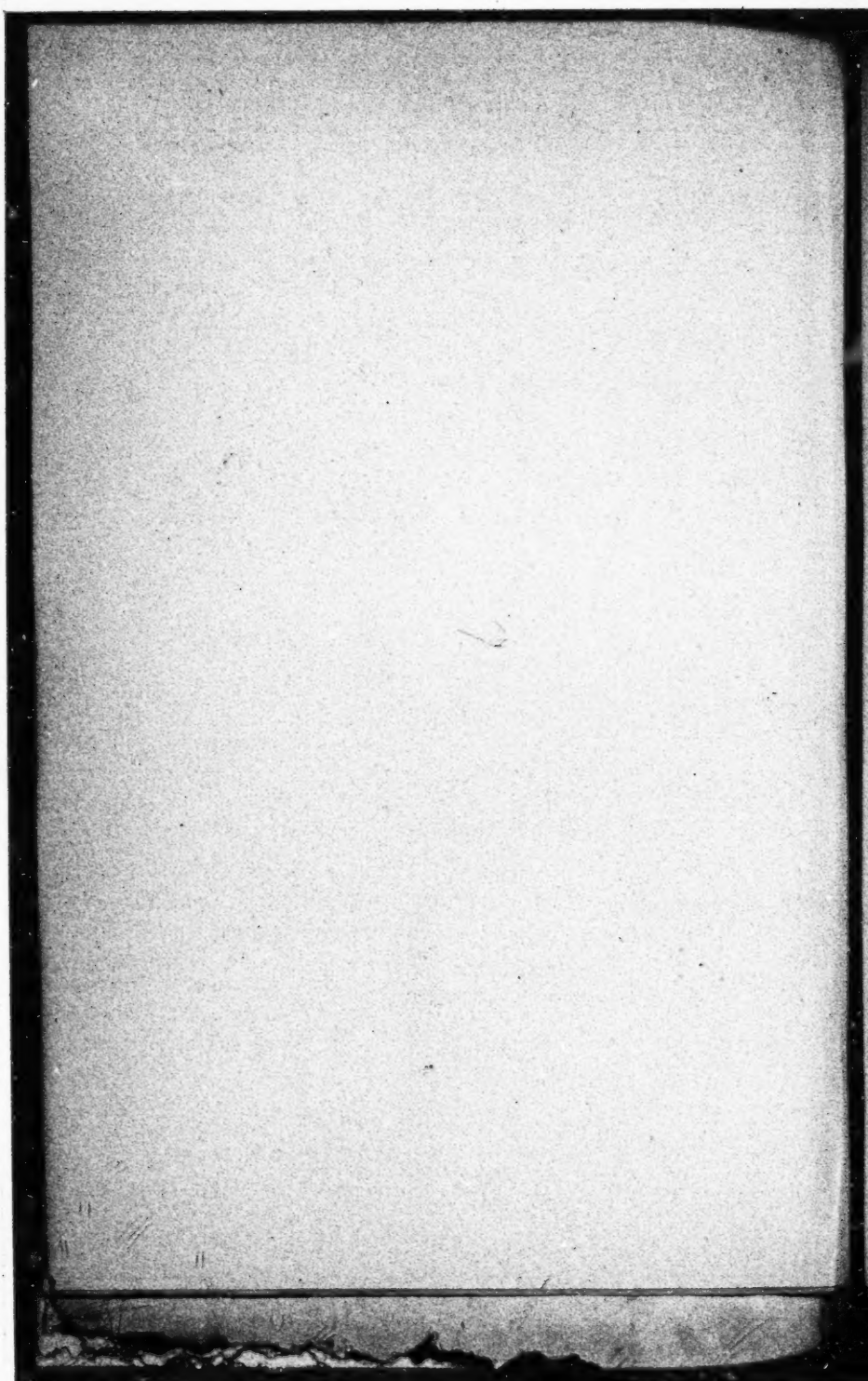
UNITED STATES OF AMERICA.

Appellee

VOL. II. (Pages 497 to 527, inclusive.)

EXHIBITS

Appeal from the United States Circuit Court
in the Eastern District of Washington,
Eastern Division.



No. 1916

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.
(IN THREE VOLUMES.)

THE NORTHERN PACIFIC RAILWAY COMPANY,
THE MERCANTILE TRUST COMPANY, HENRY
YEACKEL and FLORA YEACKEL, His Wife,
WILBUR S. BADLEY and FLORENCE C. BADLEY,
His Wife, C. D. WISE and ——— WISE, His Wife,
and R. D. McCULLY,

Appellants,

vs.

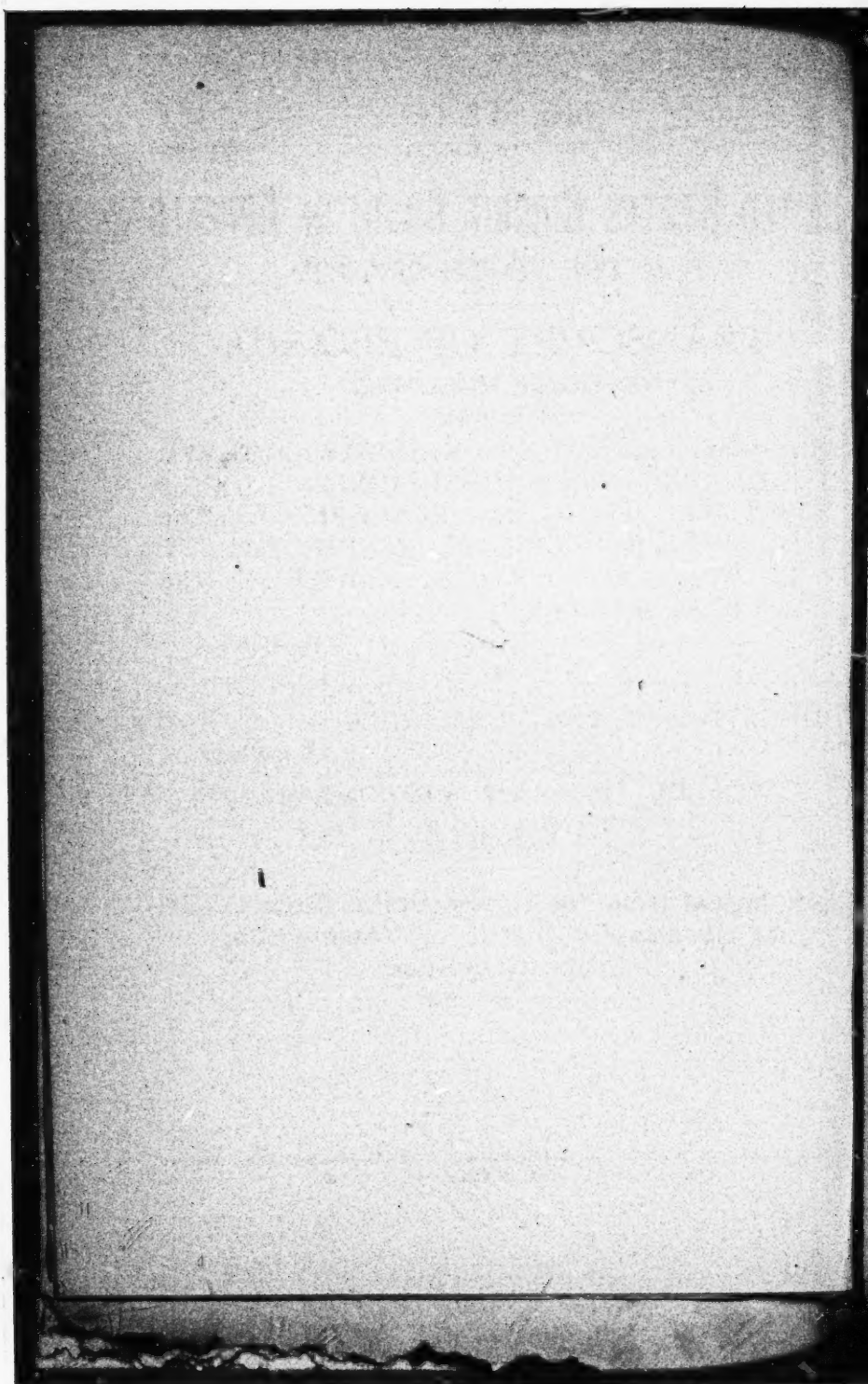
THE UNITED STATES OF AMERICA,

Appellee.

VOL. III. (Pages 567 to 627, Inclusive.)

EXHIBITS.

Upon Appeal from the United States Circuit Court
for the Eastern District of Washington,
Eastern Division.



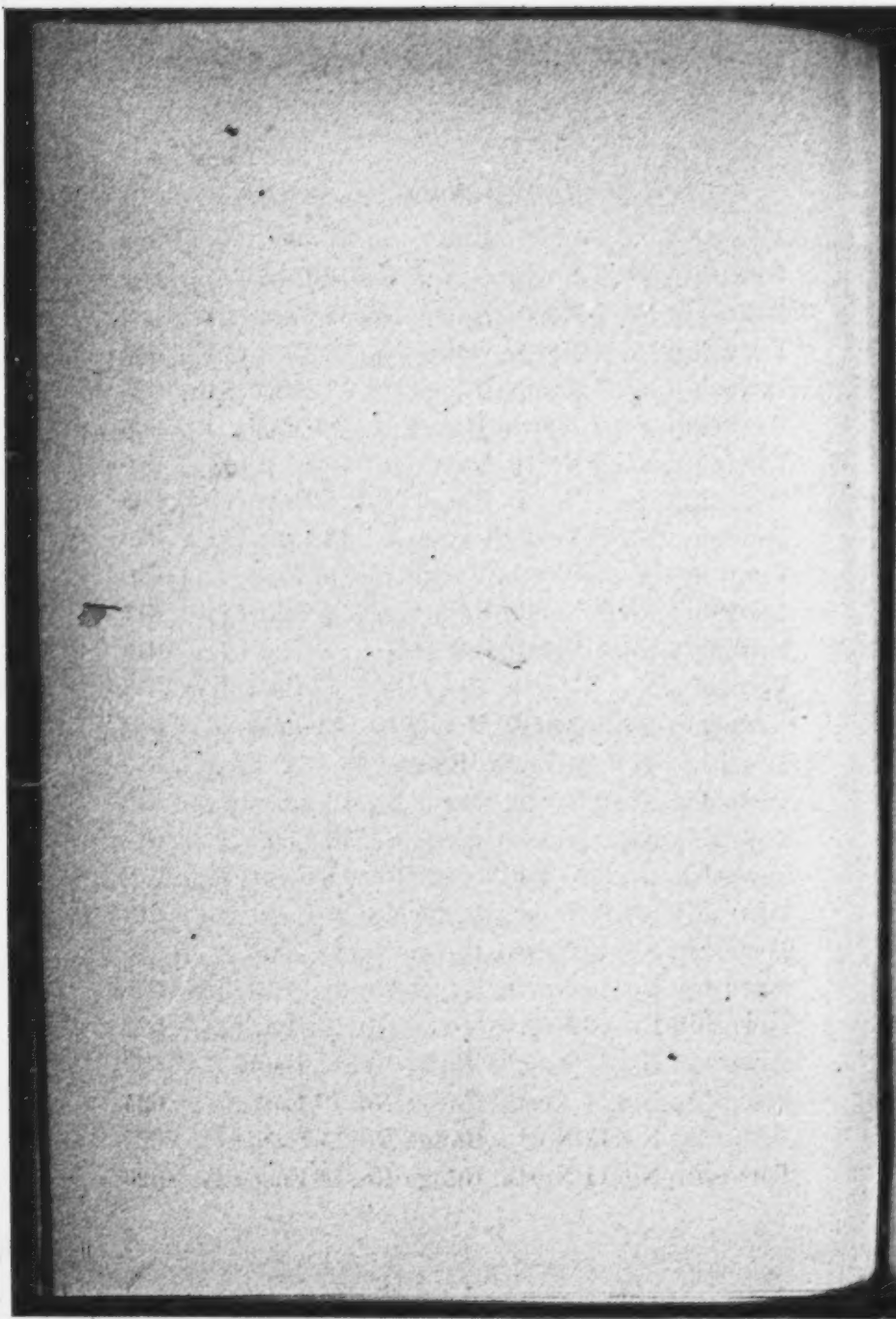
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*In the Circuit Court of the United States for the
Eastern District of Washington, Eastern Di-
vision.*

No. 1260.

UNITED STATES OF AMERICA,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY

(a Corporation), et al.,

Defendants.

**Certificate [of Clerk U. S. Circuit Court to Original
Exhibits].**

United States of America,
Eastern District of Washington,—ss.

I, Frank C. Nash, Clerk of the Circuit Court of
the United States for the Eastern District of Wash-
ington, do hereby certify that the above and fore-
going exhibits, namely:

Complainant's Exhibit 1, being the Barnard map
which was attached to Barnard Deposition;

Complainant's Exhibit 2, being the Mount Adams
Quadrangle;

568 *The Northern Pacific Railway Co. et al.*

Complainant's Exhibit 3, being document 621, small White Swan Map and Barnard Map, said exhibits being attached to the Barnard Deposition;

Complainant's Exhibit 4, being the Berry & Lodge Survey;

Complainant's Exhibit 5, being the *Lis Pendens*;

Complainant's Exhibit 6, being the Isaac I. Stevens Map, dated April 30, 1857;

Complainant's Exhibit 6, being small White Swan Map;

Complainant's Exhibit 8, being letter of W. W. Miller, of September 10, 1861;

Complainant's Exhibit 9, being letter of R. H. Milroy, of June 11, 1873;

Complainant's Exhibit 10, being agreement of September 19th, 1861;

Defendants' Exhibit "A," being letter of T. H. Cavanaugh, of June 20, 1890;

Defendants' Exhibit "B," being full notes of Schwartz Survey from the forty-seventh mile-post;

Defendants' Exhibit "C," being map of the Schwartz survey, together with original documents attached to Exhibit "C," namely, letter of May 9, 1890, from R. V. Belt, letter of May 13, 1890, from

John W. Noble, and letter of May 20, 1890, from Louis H. Grath;

Defendants' Exhibit "D," being map of the State of Washington;

Defendants' Exhibit "E," being letter of May 9, 1890, from R. V. Belt;

Defendants' Exhibit "F," being letter from Thomas Priestly, dated December 3, 1889;

Defendants' Exhibit "G," being letter from Thomas Priestly, dated March 22, 1890;

Defendants' Exhibit "H," being report of Jacob E. Noel, dated August 15, 1891;

Defendants' Exhibit "I," being letter of T. H. Carter, dated October 21, 1891;

Defendants' Exhibit "K," being book of township plats;

Defendants' Exhibit "L," being letter from M. C. McFarland, of February 28, 1884.

That the above and enumerated Exhibits constitute and are all the original exhibits on file in the above-entitled case and court, except Complainant's Exhibit "7," being letter from Isaac I. Stevens, dated April 30th, 1857, which exhibit, after a diligent search, I have been unable to find in my office, and

570 *The Northern Pacific Railway Co. et al.*

which exhibits I transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, pursuant to the order of Court of date October 27, 1910, so to do.

I further certify that the cost of preparing this certificate amounts to the sum of Seventy Cents, which sum I have received from the defendant and appellant, The Northern Pacific Railway Company.

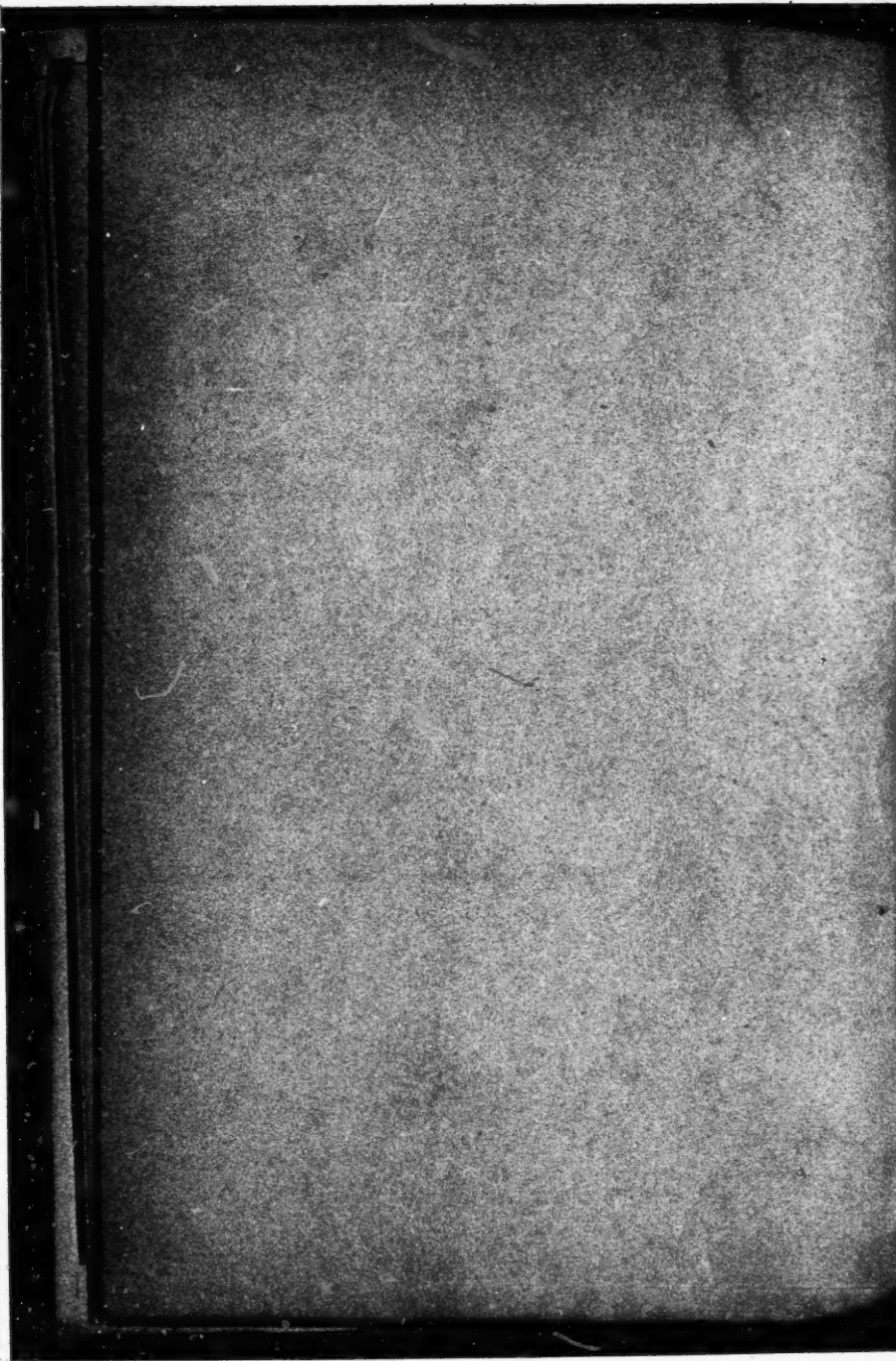
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court, at the City of Spokane, in the Eastern District of Washington, in the Ninth Circuit, the 10th day of November, A. D. 1910, and the Independence of the United States of America the One Hundred and Thirty-fifth.

[Seal]

FRANK C. NASH,

Clerk, U. S. Circuit Court for the Eastern District of Washington.

[Endorsed]: No. 1916. United States Circuit Court of Appeals for the Ninth Circuit. Filed Nov. 18, 1910. F. D. Monekton, Clerk.



583 *The Northern Pacific Railway Co. et al.*

Defendants' Exhibit "D."

*United States Circuit Court of Appeals for the Ninth
Circuit.*

NORTHERN PACIFIC RAILWAY COMPANY
et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Stipulation.

IT IS STIPULATED, In accordance with Rule 23 of the rules of this court, that in printing the record in this cause, the sketch of the Yakima Indian Reservation hereto attached may be reproduced in the printed copies of the record as a substitute for defendants' original Exhibit "D" on file in this court, and that the attached sketch shows all that is necessary to be shown by said exhibit for the purposes of this case.

EDWARD J. CANNON,

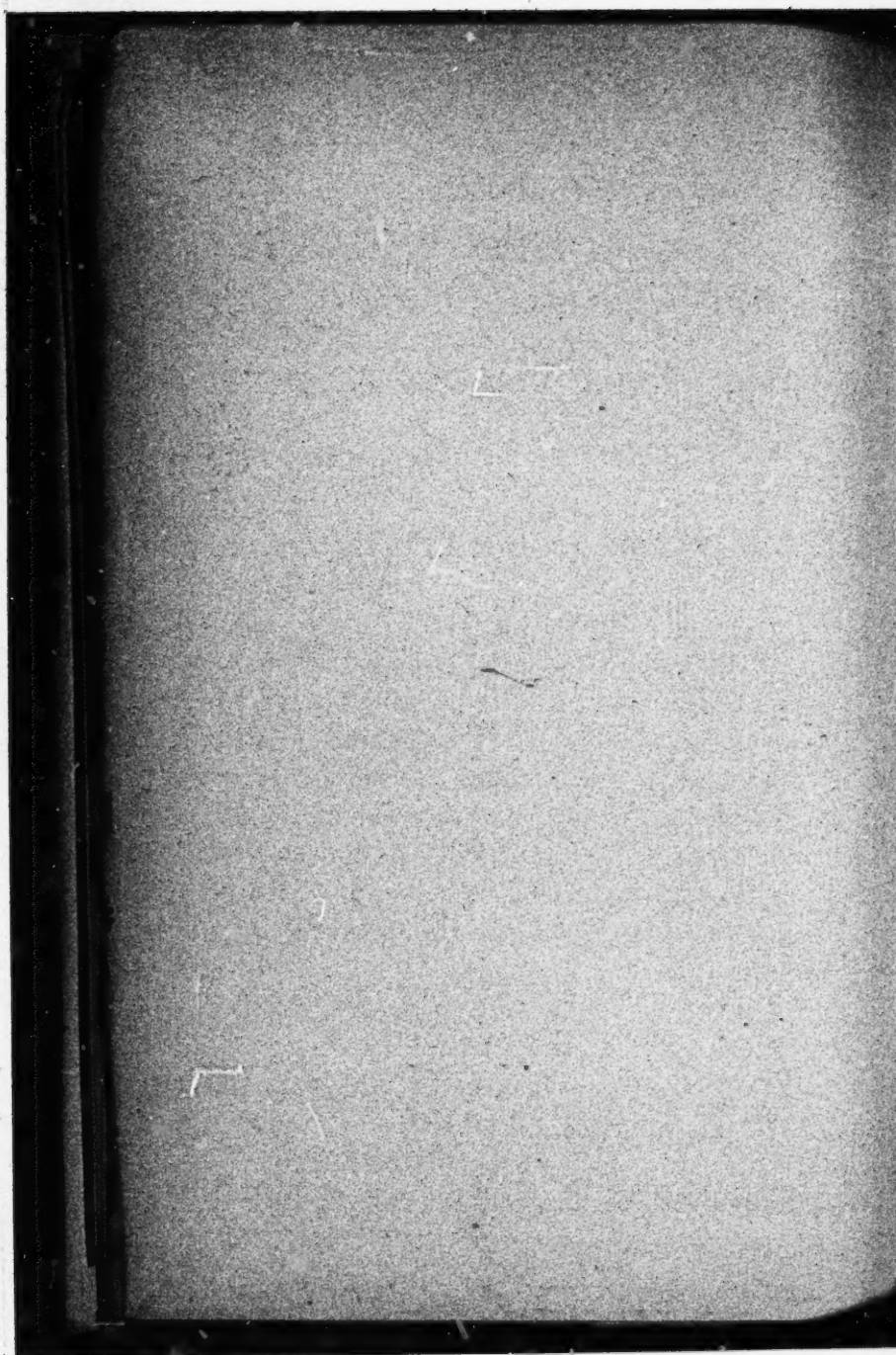
C. B. BUNN,

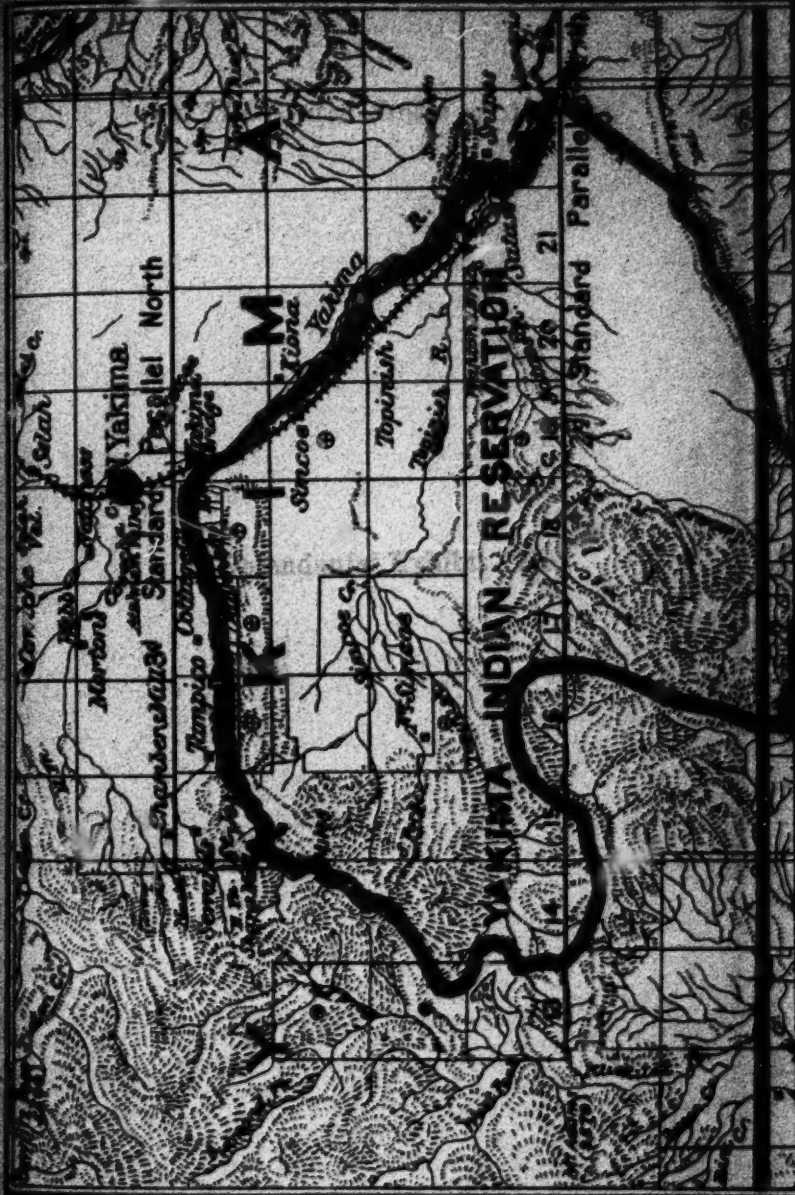
Solicitors for Appellants.

OSCAR CAIN,

Solicitor for Appellee.

Dated, Spokane, Washington, October 19, 1910.







U.S. GOVERNMENT PRINTING OFFICE

Explanations
 U.S. Land Office
 Indian Reservation
 Townships not Subdivided



Department of the Interior,
 General Land Office,

Washington, D.C., Oct. 18, 1910
 I hereby certify that the attached diagram showing the Yakima Indian
 Reservation and adjoining townships thereto is a tracing from a part of a
 map issued by this office bearing the following title:

DEPARTMENT OF THE INTERIOR
 GENERAL LAND OFFICE
 HON. THOMAS H. CARTER, COMMISSIONER.

STATE OF WASHINGTON.

Scale of Miles

1891.

Compiled from the official Records of the General Land Office and other sources
 under supervision of

A.F. DINSMORE, Chief of Draughting Division GLO

and is a correct copy of that portion which it purports to represent.



Frank Dinsmore
 Commissioner.

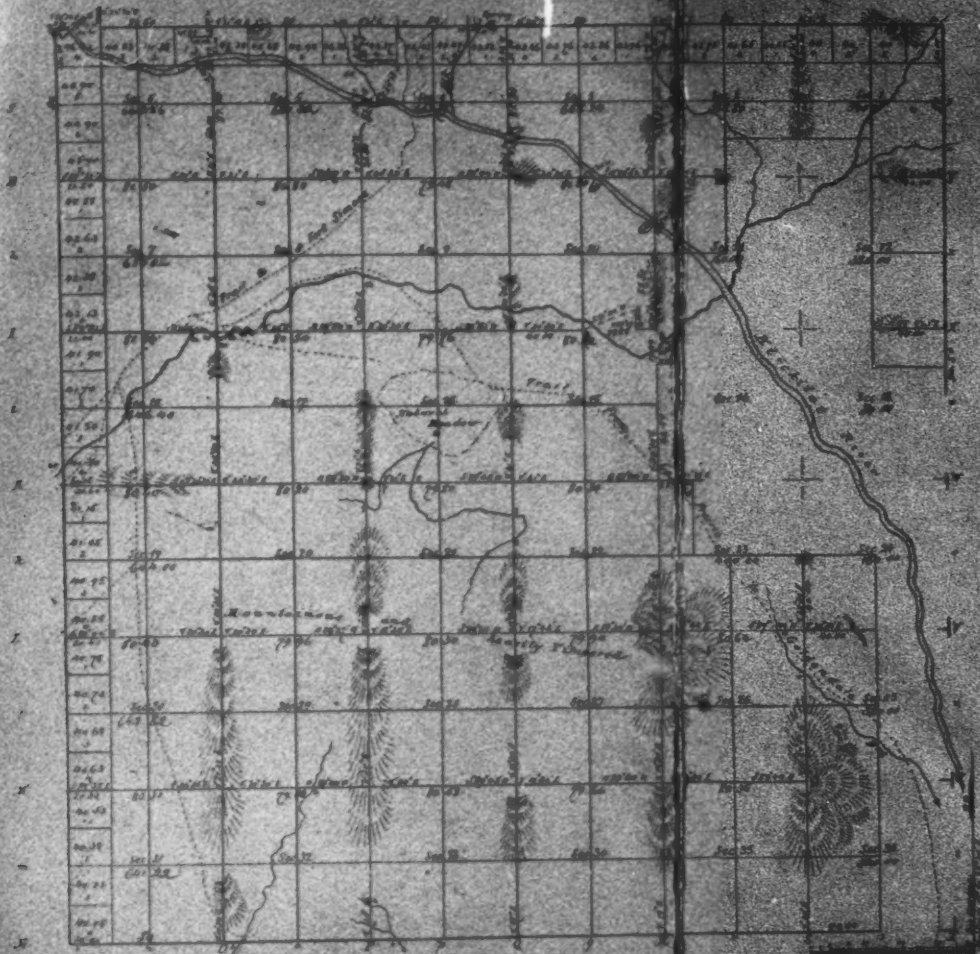
589

See also the same letter of July 25, 1877

592

TOWNSHIP N° 6 North RANGE N° 10 East

Atlantic MERIDIAN



referred to in the letter of July 25, 1877

Department of the Interior
General Land Office
Feb 28 - 1878

I hereby certify that this is a true and correct copy of the original map as on file in this Office.

[Signature]
Acting Commissioner

TABLE OF LANDS IN THIS TOWNSHIP

Section	Owner	Acres	Value	Remarks
1	John J.
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

I have this day ...
W. H. ...
...

Area in Acres	
Public Land	3980.16
Indian Reservation	
Indian Allotments	
Mineral Claims	
Water Surface	
Total Area	3980.16

Scale: 40 Chains to an Inch

North Arrow



Survey District	By Whom Surveyed	Contract No.	Date	Area in Acres	Area in Acres	Area in Acres
1st and 2nd	Edwin Richardson	1884	March 25, 1885	10	10	10
3rd and 4th	Edwin Richardson	1884	March 25, 1885	10	10	10
5th and 6th	Edwin Richardson	1884	March 25, 1885	10	10	10
7th and 8th	Edwin Richardson	1884	March 25, 1885	10	10	10
9th and 10th	Edwin Richardson	1884	March 25, 1885	10	10	10
11th and 12th	Edwin Richardson	1884	March 25, 1885	10	10	10
13th and 14th	Edwin Richardson	1884	March 25, 1885	10	10	10
15th and 16th	Edwin Richardson	1884	March 25, 1885	10	10	10
17th and 18th	Edwin Richardson	1884	March 25, 1885	10	10	10
19th and 20th	Edwin Richardson	1884	March 25, 1885	10	10	10
21st and 22nd	Edwin Richardson	1884	March 25, 1885	10	10	10
23rd and 24th	Edwin Richardson	1884	March 25, 1885	10	10	10
25th and 26th	Edwin Richardson	1884	March 25, 1885	10	10	10
27th and 28th	Edwin Richardson	1884	March 25, 1885	10	10	10
29th and 30th	Edwin Richardson	1884	March 25, 1885	10	10	10
31st and 32nd	Edwin Richardson	1884	March 25, 1885	10	10	10

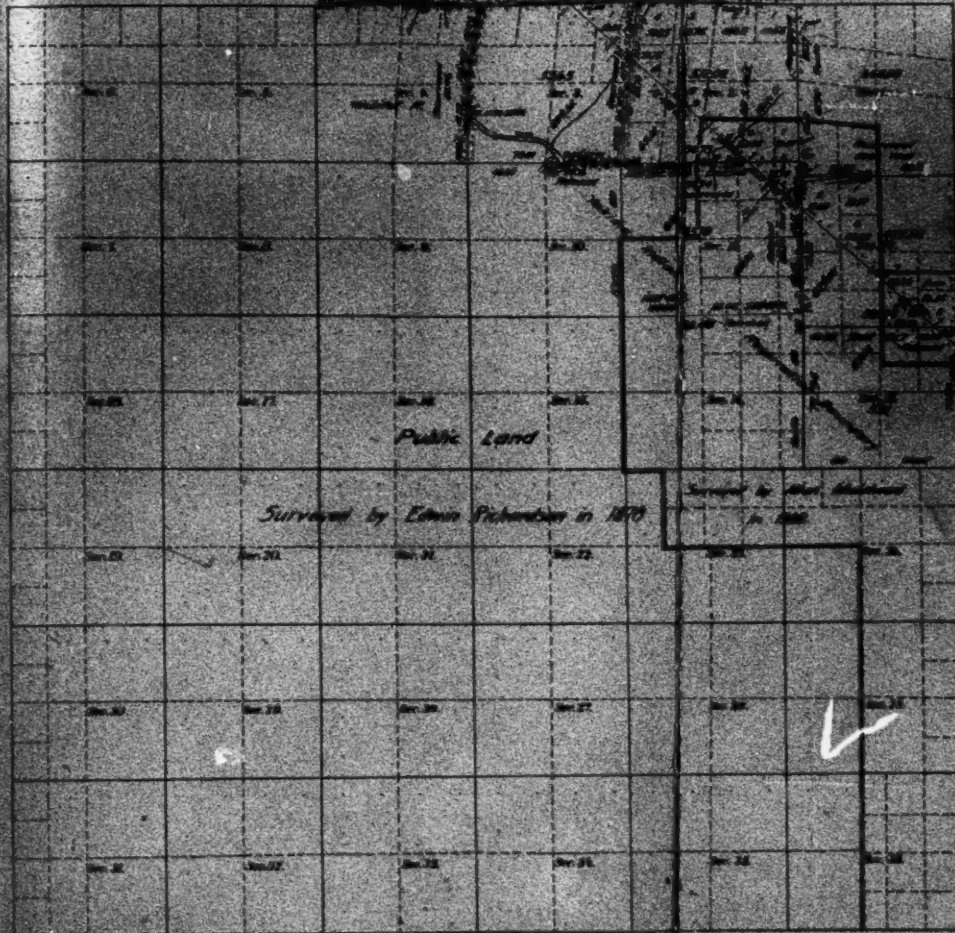
The following is a list of the names of the persons who have been granted patents of the United States Government for the discovery of the new method of surveying land by the use of the surveying instrument known as the 'Surveying Machine'.

Township N° 6 North

Yakima Indian Reservation
Range N° 13 East
Willamette

Meridian, Washington

594



Section	Owner	Acres	Value	Remarks
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				

Section	Owner	Acres	Value	Remarks
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				

The above map of Township 6 North, Range 13 East, Willamette Meridian, Washington, is hereby confirmed and approved by the Surveyor General of the State of Washington, May 12, 1880.

Edwin Pickens
Surveyor General of the State of Washington

3

Township No. 6 North, Range No. 14 East, Will. Mer., W. T.

595



Received with San. Seals
11th of Sept. 1877

Department of the Interior
General Land Office

Feb 4 - 1884

Plot filed in Land Office
September 6 - 1877

I hereby certify that this is a true and correct copy of the original file in this office

W. M. ...

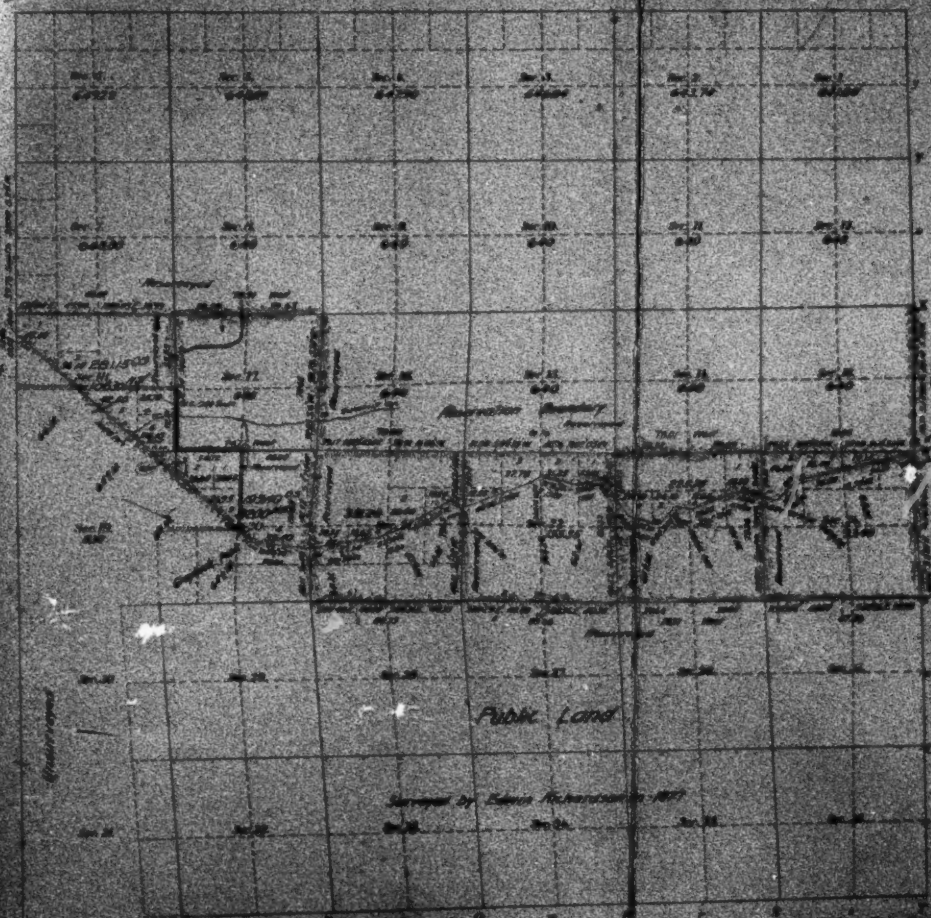
Surveyor General's Office
ALBANY, NEW YORK
September 2d 1877

This is a true and correct copy of the original file in this office

W. M. ...

Surveyor General

Township N° 6 North, Range N° 14 East, Willamette Meridian, Washington



NAME	AGE	SEX	RELATION	DATE	TIME	PLACE	REMARKS
<p> <i>Arrived on 12/18/48</i> <i>Left on 12/19/48</i> <i>Left on 12/20/48</i> <i>Left on 12/21/48</i> </p>							

[illegible]

The above copy furnished by Mr. H. B. ...
... ..
... ..
... ..
... ..

Township No. 8 North, Range No. 15 East, Will. Mer., W. T.

597



Received with Sherburne
Letter of May 3, 1877

Department of the Interior
General Land Office
Feb. 4 - 1874

I hereby certify that this abstract is true & correct
copy of the original on file in this Office

[Signature]
Commissioner



G.P.N.

Acres	By Whom Surveyed	Date of Survey	Original Survey	Re-surveyed	Re-surveyed
1 77 45	Edwin Richardson	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877
15 65 37	Edwin Richardson	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877
77 35	Edwin Richardson	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877
7 63 30	Edwin Richardson	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877
1 21 35	Edwin Richardson	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877	Aug 1, 1877

The above copy of Township N 6 North, Range N 15 East, Willamette Meridian, Washington, is hereby certified to be a true and correct copy of the original survey made by Edwin Richardson, Surveyor General, on August 1, 1877.

Surveyor General,
 Department of the Interior,
 Washington, D.C.

Wm. H. McLaughlin
 Chief Clerk
 Department of the Interior,
 Washington, D.C.



Recd. with the same from the
of Feb 5-1894

Department of the Interior
General Land Office
Jan 4-1894

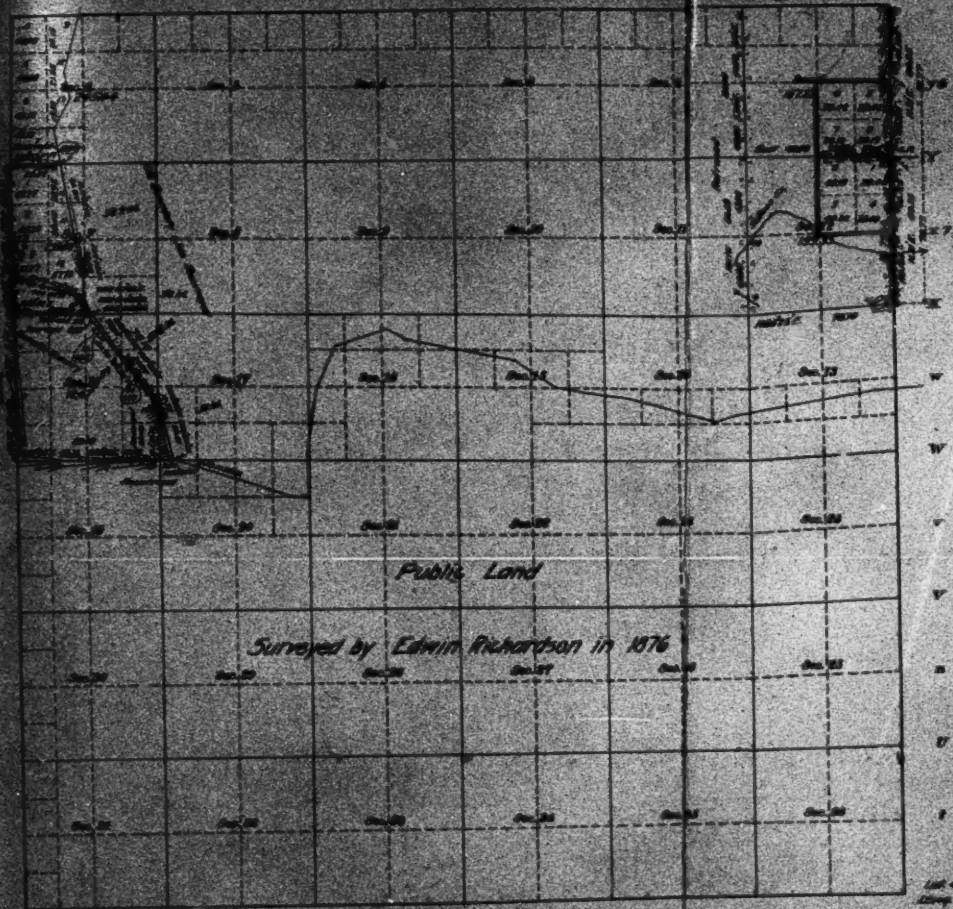
I hereby certify that the above is a true and correct copy of the original on file in this Office

[Handwritten signature]

Section	Area	Acres	Value	Remarks
1	100	100	100	
2	100	100	100	
3	100	100	100	
4	100	100	100	
5	100	100	100	
6	100	100	100	
7	100	100	100	
8	100	100	100	
9	100	100	100	
10	100	100	100	

Surveyor General's Office
Oregon, December 1893
January 4-1894
The above Survey of the Willamette River, Oregon, is hereby certified to be correct and approved by the Surveyor General of the State of Oregon.
W. McWhorter
Surveyor General

14-61561
 Yakima Indian Reservation
 Township No. 6 North Range No. 16 East, Willamette Meridian, Washington



Area in Acres	
Public Land	
Indian Reservations	613.98
Indian Allotments	
Mineral Claims	
Other Sections	
Total Area	613.98

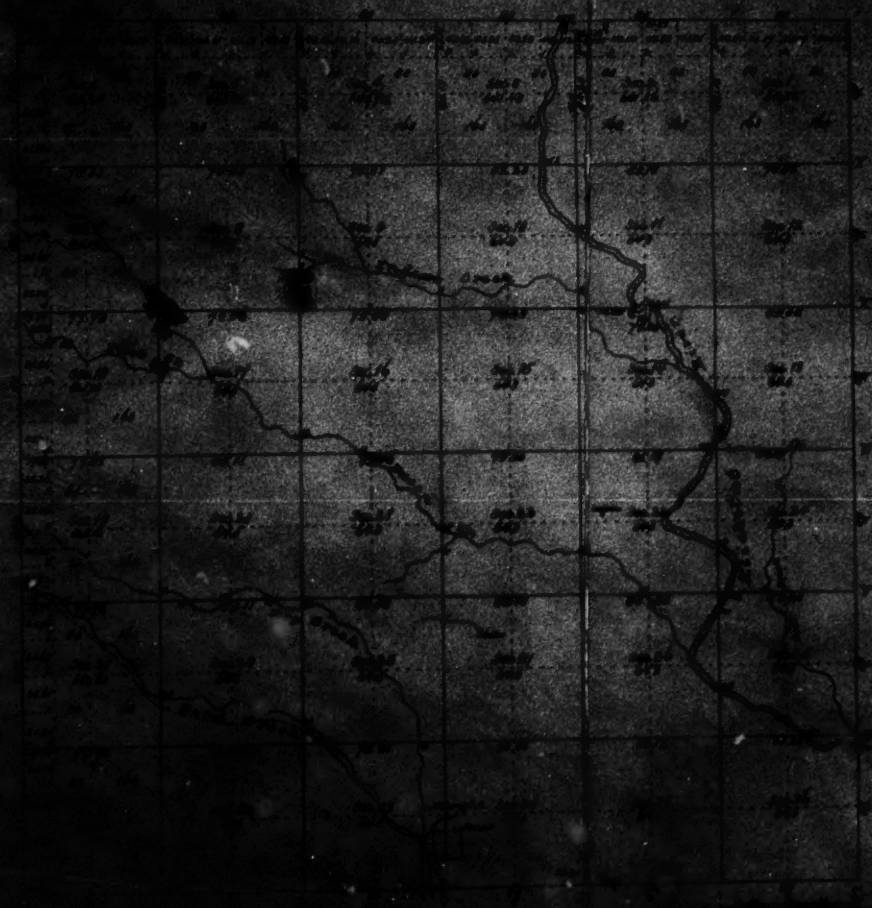
1st 41.56 N. 1.25 E.
 2nd 10.74 N. 1.25 E. to an oak
 then Magnetic North 22.5 E.

Section	Area in Acres	Area in Acres	Area in Acres	Area in Acres	Area in Acres
1	36.00	2	36.00	3	36.00
4	36.00	5	36.00	6	36.00
7	36.00	8	36.00	9	36.00
10	36.00	11	36.00	12	36.00
13	36.00	14	36.00	15	36.00
16	36.00	17	36.00	18	36.00
19	36.00	20	36.00	21	36.00
22	36.00	23	36.00	24	36.00
25	36.00	26	36.00	27	36.00
28	36.00	29	36.00	30	36.00
31	36.00	32	36.00	33	36.00
34	36.00	35	36.00	36	36.00
37	36.00	38	36.00	39	36.00
40	36.00	41	36.00	42	36.00
43	36.00	44	36.00	45	36.00
46	36.00	47	36.00	48	36.00
49	36.00	50	36.00	51	36.00
52	36.00	53	36.00	54	36.00
55	36.00	56	36.00	57	36.00
58	36.00	59	36.00	60	36.00
61	36.00	62	36.00	63	36.00
64	36.00	65	36.00	66	36.00
67	36.00	68	36.00	69	36.00
70	36.00	71	36.00	72	36.00
73	36.00	74	36.00	75	36.00
76	36.00	77	36.00	78	36.00
79	36.00	80	36.00	81	36.00
82	36.00	83	36.00	84	36.00
85	36.00	86	36.00	87	36.00
88	36.00	89	36.00	90	36.00
91	36.00	92	36.00	93	36.00
94	36.00	95	36.00	96	36.00
97	36.00	98	36.00	99	36.00
100	36.00	101	36.00	102	36.00
103	36.00	104	36.00	105	36.00
106	36.00	107	36.00	108	36.00
109	36.00	110	36.00	111	36.00
112	36.00	113	36.00	114	36.00
115	36.00	116	36.00	117	36.00
118	36.00	119	36.00	120	36.00
121	36.00	122	36.00	123	36.00
124	36.00	125	36.00	126	36.00
127	36.00	128	36.00	129	36.00
130	36.00	131	36.00	132	36.00
133	36.00	134	36.00	135	36.00
136	36.00	137	36.00	138	36.00
139	36.00	140	36.00	141	36.00
142	36.00	143	36.00	144	36.00
145	36.00	146	36.00	147	36.00
148	36.00	149	36.00	150	36.00
151	36.00	152	36.00	153	36.00
154	36.00	155	36.00	156	36.00
157	36.00	158	36.00	159	36.00
160	36.00	161	36.00	162	36.00
163	36.00	164	36.00	165	36.00
166	36.00	167	36.00	168	36.00
169	36.00	170	36.00	171	36.00
172	36.00	173	36.00	174	36.00
175	36.00	176	36.00	177	36.00
178	36.00	179	36.00	180	36.00
181	36.00	182	36.00	183	36.00
184	36.00	185	36.00	186	36.00
187	36.00	188	36.00	189	36.00
190	36.00	191	36.00	192	36.00
193	36.00	194	36.00	195	36.00
196	36.00	197	36.00	198	36.00
199	36.00	200	36.00	201	36.00
202	36.00	203	36.00	204	36.00
205	36.00	206	36.00	207	36.00
208	36.00	209	36.00	210	36.00
211	36.00	212	36.00	213	36.00
214	36.00	215	36.00	216	36.00
217	36.00	218	36.00	219	36.00
220	36.00	221	36.00	222	36.00
223	36.00	224	36.00	225	36.00
226	36.00	227	36.00	228	36.00
229	36.00	230	36.00	231	36.00
232	36.00	233	36.00	234	36.00
235	36.00	236	36.00	237	36.00
238	36.00	239	36.00	240	36.00
241	36.00	242	36.00	243	36.00
244	36.00	245	36.00	246	36.00
247	36.00	248	36.00	249	36.00
250	36.00	251	36.00	252	36.00
253	36.00	254	36.00	255	36.00
256	36.00	257	36.00	258	36.00
259	36.00	260	36.00	261	36.00
262	36.00	263	36.00	264	36.00
265	36.00	266	36.00	267	36.00
268	36.00	269	36.00	270	36.00
271	36.00	272	36.00	273	36.00
274	36.00	275	36.00	276	36.00
277	36.00	278	36.00	279	36.00
280	36.00	281	36.00	282	36.00
283	36.00	284	36.00	285	36.00
286	36.00	287	36.00	288	36.00
289	36.00	290	36.00	291	36.00
292	36.00	293	36.00	294	36.00
295	36.00	296	36.00	297	36.00
298	36.00	299	36.00	300	36.00

The township of Township No. 6 North Range No. 16 East of the Willamette Meridian, Washington is hereby confirmed to the field notes of the survey thereof on file in this office, which have been examined and approved.
 U.S. Surveyor General's Office,
 Olympia, Washington
 February 4, 1903
 E. H. Kingdum
 Surveyor General
 for Washington

10

Township 36 N. Range 15 E. Section 36



Section	Area	Remarks
1	1.00	
2	1.00	
3	1.00	
4	1.00	
5	1.00	
6	1.00	
7	1.00	
8	1.00	
9	1.00	
10	1.00	
11	1.00	
12	1.00	
13	1.00	
14	1.00	
15	1.00	
16	1.00	
17	1.00	
18	1.00	
19	1.00	
20	1.00	
21	1.00	
22	1.00	
23	1.00	
24	1.00	
25	1.00	
26	1.00	
27	1.00	
28	1.00	
29	1.00	
30	1.00	
31	1.00	
32	1.00	
33	1.00	
34	1.00	
35	1.00	
36	1.00	

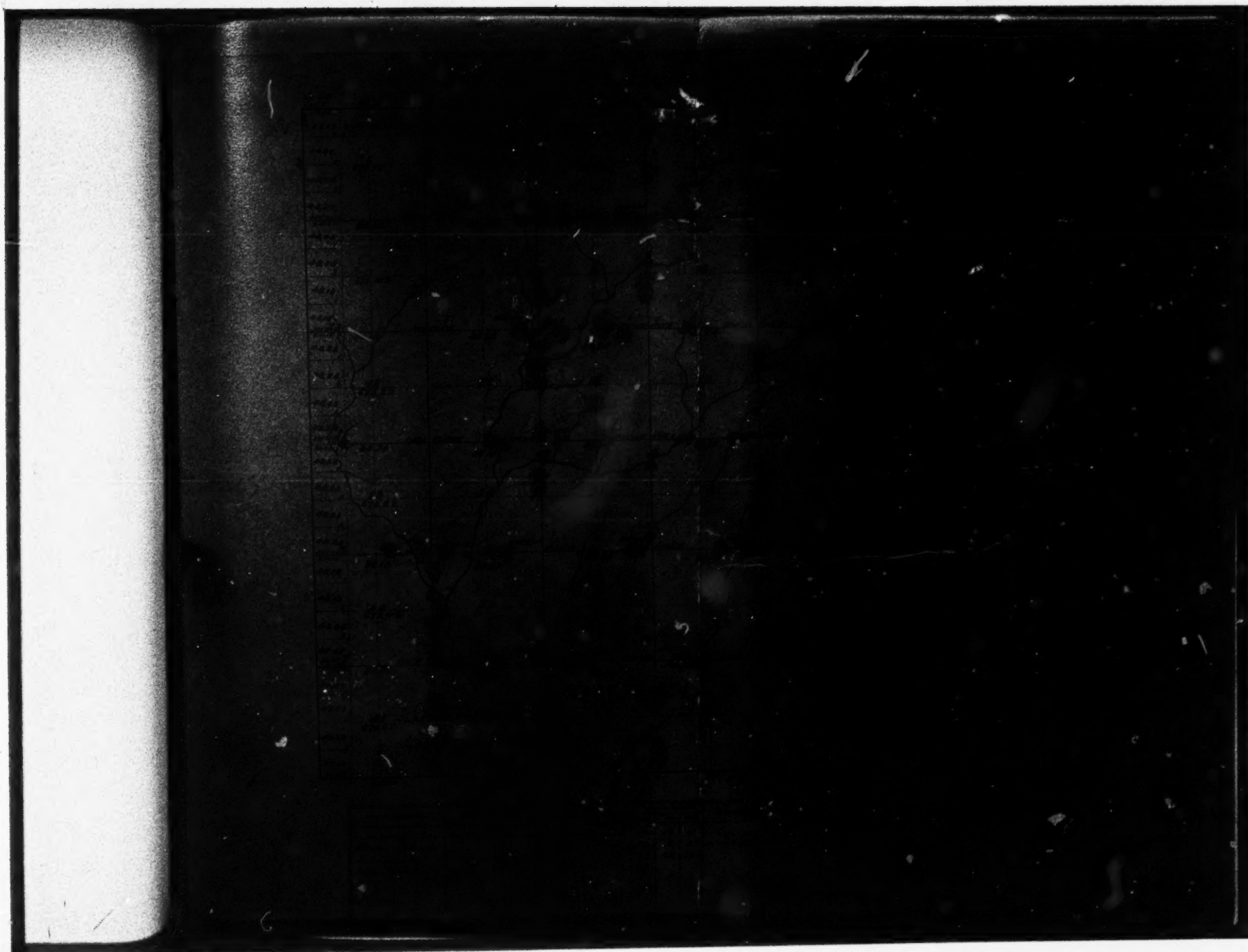
Handwritten notes and signatures, including a large signature at the bottom right.

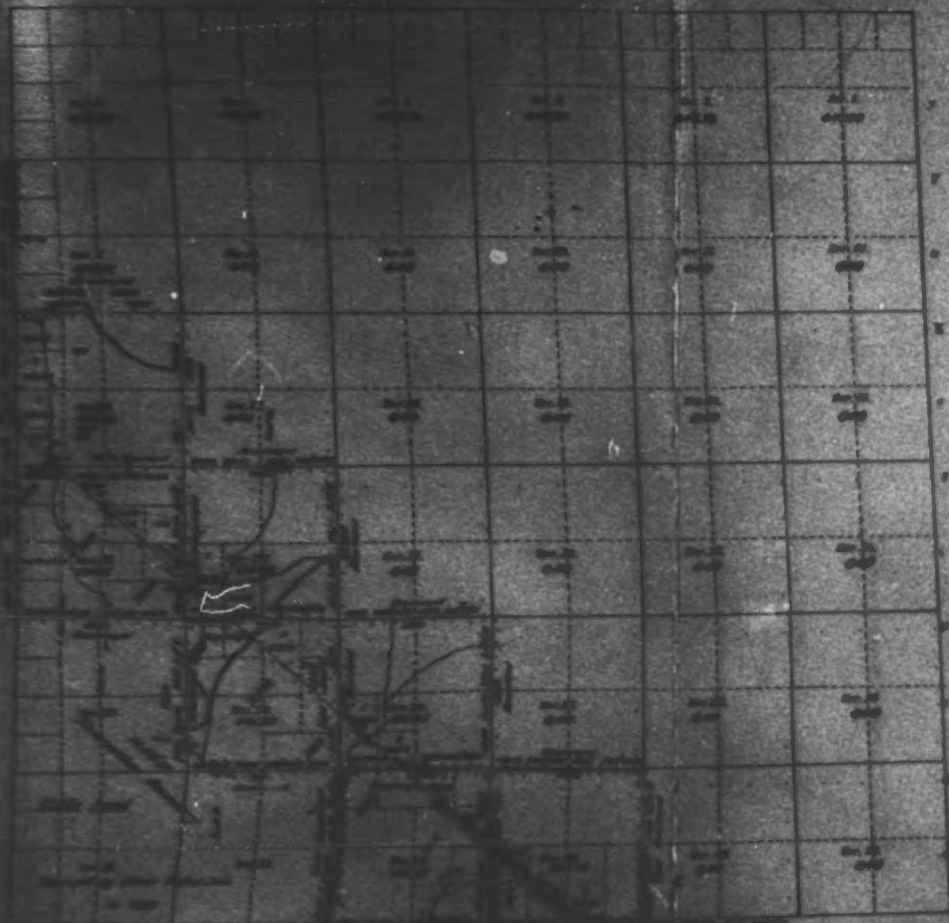


U.S. G. S. No. 1000

Section	Acres	Owner	Acres	Owner	Acres	Owner
1	36	Newton Clark	36	Newton Clark	36	Newton Clark
2	36	Newton Clark	36	Newton Clark	36	Newton Clark
3	36	Newton Clark	36	Newton Clark	36	Newton Clark
4	36	Newton Clark	36	Newton Clark	36	Newton Clark
5	36	Newton Clark	36	Newton Clark	36	Newton Clark
6	36	Newton Clark	36	Newton Clark	36	Newton Clark
7	36	Newton Clark	36	Newton Clark	36	Newton Clark
8	36	Newton Clark	36	Newton Clark	36	Newton Clark
9	36	Newton Clark	36	Newton Clark	36	Newton Clark
10	36	Newton Clark	36	Newton Clark	36	Newton Clark
11	36	Newton Clark	36	Newton Clark	36	Newton Clark
12	36	Newton Clark	36	Newton Clark	36	Newton Clark
13	36	Newton Clark	36	Newton Clark	36	Newton Clark
14	36	Newton Clark	36	Newton Clark	36	Newton Clark
15	36	Newton Clark	36	Newton Clark	36	Newton Clark
16	36	Newton Clark	36	Newton Clark	36	Newton Clark
17	36	Newton Clark	36	Newton Clark	36	Newton Clark
18	36	Newton Clark	36	Newton Clark	36	Newton Clark
19	36	Newton Clark	36	Newton Clark	36	Newton Clark
20	36	Newton Clark	36	Newton Clark	36	Newton Clark
21	36	Newton Clark	36	Newton Clark	36	Newton Clark
22	36	Newton Clark	36	Newton Clark	36	Newton Clark
23	36	Newton Clark	36	Newton Clark	36	Newton Clark
24	36	Newton Clark	36	Newton Clark	36	Newton Clark
25	36	Newton Clark	36	Newton Clark	36	Newton Clark
26	36	Newton Clark	36	Newton Clark	36	Newton Clark
27	36	Newton Clark	36	Newton Clark	36	Newton Clark
28	36	Newton Clark	36	Newton Clark	36	Newton Clark
29	36	Newton Clark	36	Newton Clark	36	Newton Clark
30	36	Newton Clark	36	Newton Clark	36	Newton Clark
31	36	Newton Clark	36	Newton Clark	36	Newton Clark
32	36	Newton Clark	36	Newton Clark	36	Newton Clark
33	36	Newton Clark	36	Newton Clark	36	Newton Clark
34	36	Newton Clark	36	Newton Clark	36	Newton Clark
35	36	Newton Clark	36	Newton Clark	36	Newton Clark
36	36	Newton Clark	36	Newton Clark	36	Newton Clark

Newton Clark, 1882
 Surveyed by Newton Clark
 in 1882
 Newton Clark
 1882

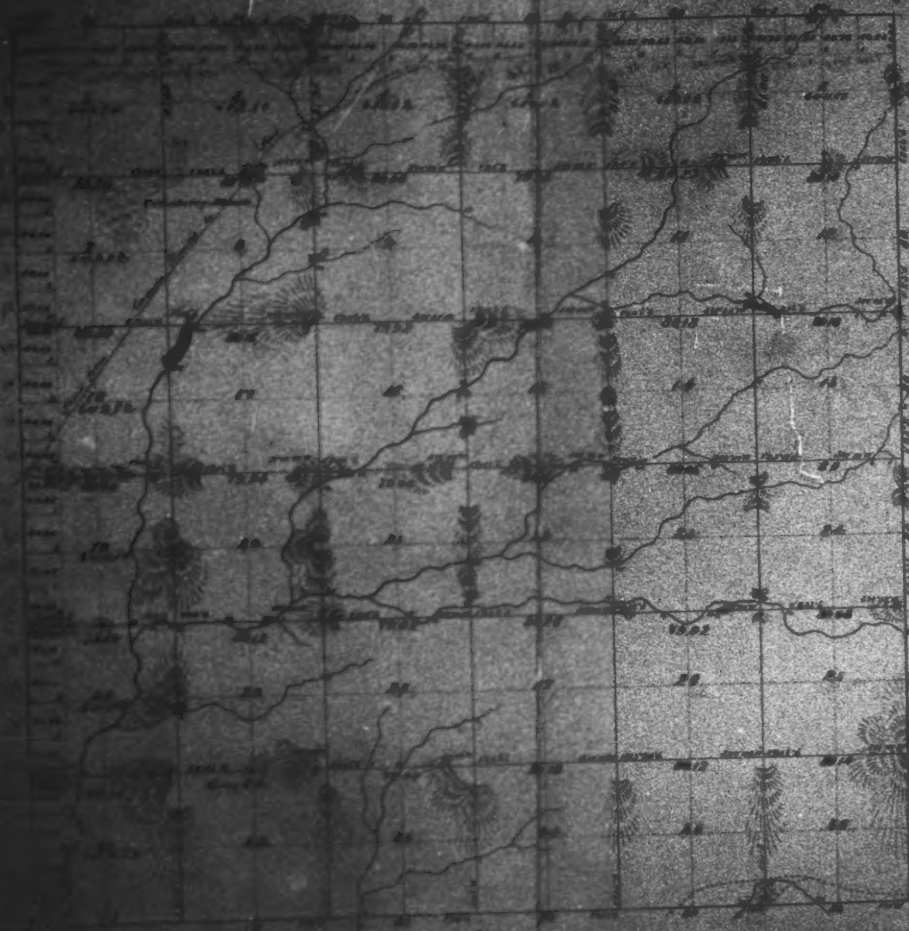


[illegible][illegible]

At College of Commerce, University of Illinois, Chicago, August 12, 1901, and
the Blue Room, Hotel Loring, Chicago, 1901

A. J. Collins, Jr. Chairman, Board of Directors, 11111 E. 1st Street, Aurora, Ill. 60015

TOWNSHIP NO. 7 NORTH, RANGE NO. 11 EAST, WILL. MER. W. T.



REVIEWER GENERAL'S OFFICE

CHICAGO, WISCONSIN TERRITORY

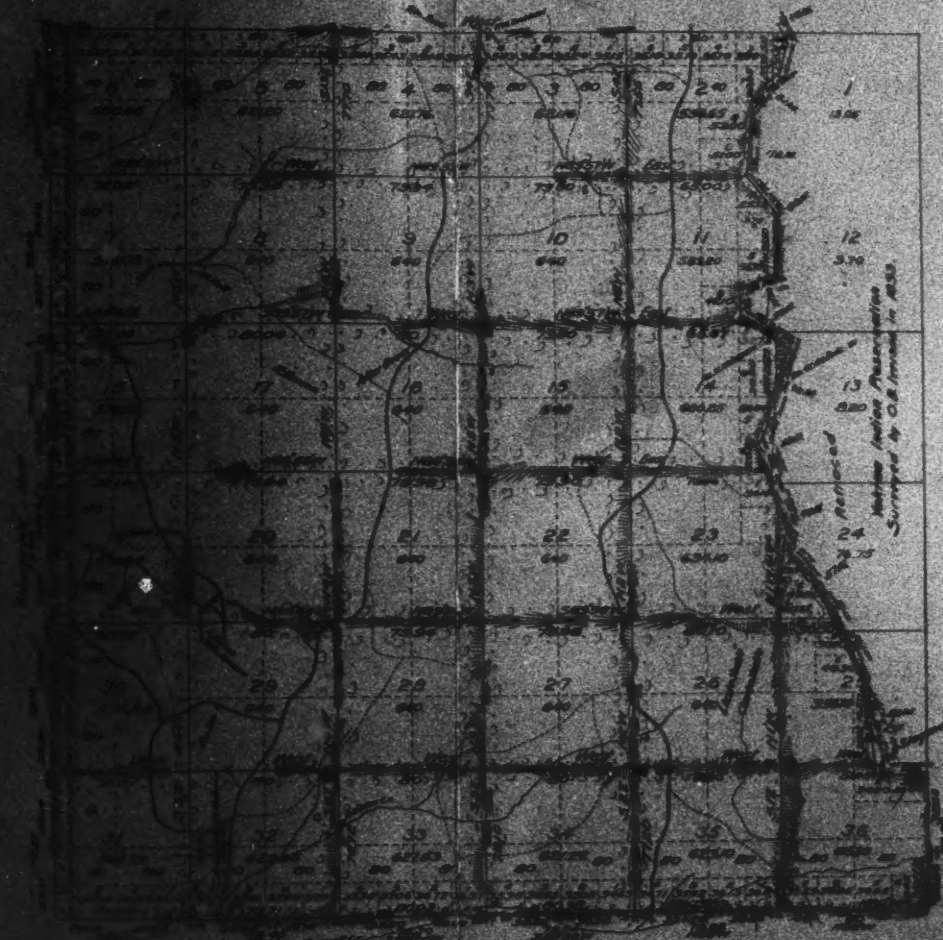
Received by the Surveyor General of the Territory of Wisconsin, for the purpose of recording the same, this 10th day of January, 1884.

Section	Owner	Acres	Value	Remarks
1	J. A. Smith	36	1080	
2	W. B. Jones	36	1080	
3	C. D. Brown	36	1080	
4	J. A. Smith	36	1080	
5	W. B. Jones	36	1080	
6	C. D. Brown	36	1080	
7	J. A. Smith	36	1080	
8	W. B. Jones	36	1080	
9	C. D. Brown	36	1080	
10	J. A. Smith	36	1080	
11	W. B. Jones	36	1080	
12	C. D. Brown	36	1080	
13	J. A. Smith	36	1080	
14	W. B. Jones	36	1080	
15	C. D. Brown	36	1080	
16	J. A. Smith	36	1080	
17	W. B. Jones	36	1080	
18	C. D. Brown	36	1080	
19	J. A. Smith	36	1080	
20	W. B. Jones	36	1080	
21	C. D. Brown	36	1080	
22	J. A. Smith	36	1080	
23	W. B. Jones	36	1080	
24	C. D. Brown	36	1080	
25	J. A. Smith	36	1080	
26	W. B. Jones	36	1080	
27	C. D. Brown	36	1080	
28	J. A. Smith	36	1080	
29	W. B. Jones	36	1080	
30	C. D. Brown	36	1080	
31	J. A. Smith	36	1080	
32	W. B. Jones	36	1080	
33	C. D. Brown	36	1080	
34	J. A. Smith	36	1080	
35	W. B. Jones	36	1080	
36	C. D. Brown	36	1080	

TOWNSHIP No. 7 NORTH RANGE No. 15 EAST WILLAMETTE MERIDIAN, WASHINGTON.

608

Section	Area
1	3.56
2	3.70
3	3.80
4	3.90
5	4.00
6	4.10
7	4.20
8	4.30
9	4.40
10	4.50
11	4.60
12	4.70
13	4.80
14	4.90
15	5.00
16	5.10
17	5.20
18	5.30
19	5.40
20	5.50
21	5.60
22	5.70
23	5.80
24	5.90
25	6.00
26	6.10
27	6.20
28	6.30
29	6.40
30	6.50
31	6.60
32	6.70
33	6.80
34	6.90
35	7.00
36	7.10
37	7.20
38	7.30
39	7.40
40	7.50
41	7.60
42	7.70
43	7.80
44	7.90
45	8.00
46	8.10
47	8.20
48	8.30
49	8.40
50	8.50
51	8.60
52	8.70
53	8.80
54	8.90
55	9.00
56	9.10
57	9.20
58	9.30
59	9.40
60	9.50
61	9.60
62	9.70
63	9.80
64	9.90
65	10.00



Reserved for the use of the U.S. Army
Surveyed by O.B. Jones in 1853

The above map of Township No. 7 North of Range No. 15 East of the Willamette Meridian, Washington, is strictly conformable to the field notes of the survey herein on file in this Office which have been examined and approved.
Surveyor General's Office
Olympia, Washington
February 3, 1894
J. H. Kneeland
Surveyor General, Washington

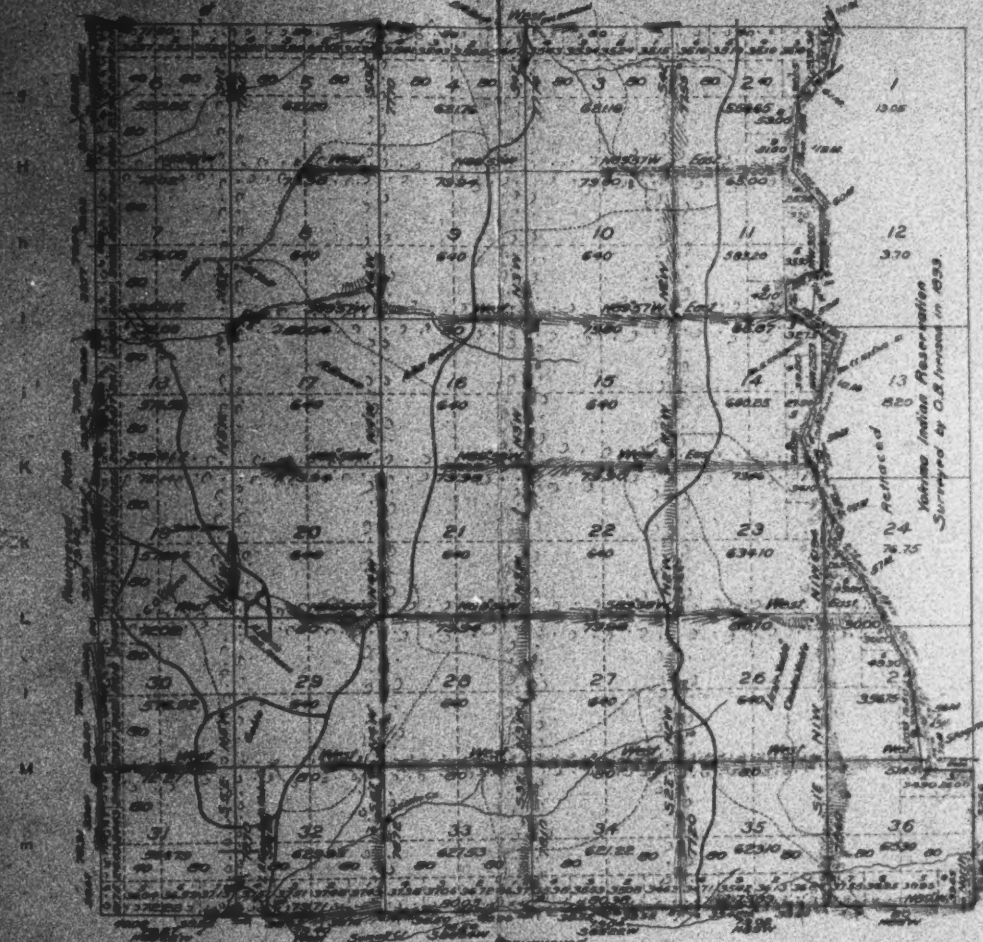
17

TOWNSHIP No. 7 NORTH, RANGE No. 15 EAST, WILLAMETTE MERIDIAN, WASHINGTON.

609

Area in Acres	
Section 1	136,327
Section 2	136,327
Section 3	136,327
Section 4	136,327
Section 5	136,327
Section 6	136,327
Section 7	136,327
Section 8	136,327
Section 9	136,327
Section 10	136,327
Section 11	136,327
Section 12	136,327
Section 13	136,327
Section 14	136,327
Section 15	136,327
Section 16	136,327
Section 17	136,327
Section 18	136,327
Section 19	136,327
Section 20	136,327
Section 21	136,327
Section 22	136,327
Section 23	136,327
Section 24	136,327
Section 25	136,327
Section 26	136,327
Section 27	136,327
Section 28	136,327
Section 29	136,327
Section 30	136,327
Section 31	136,327
Section 32	136,327
Section 33	136,327
Section 34	136,327
Section 35	136,327
Section 36	136,327

Scale: 40 Chains to an Inch
 Survey Map Department



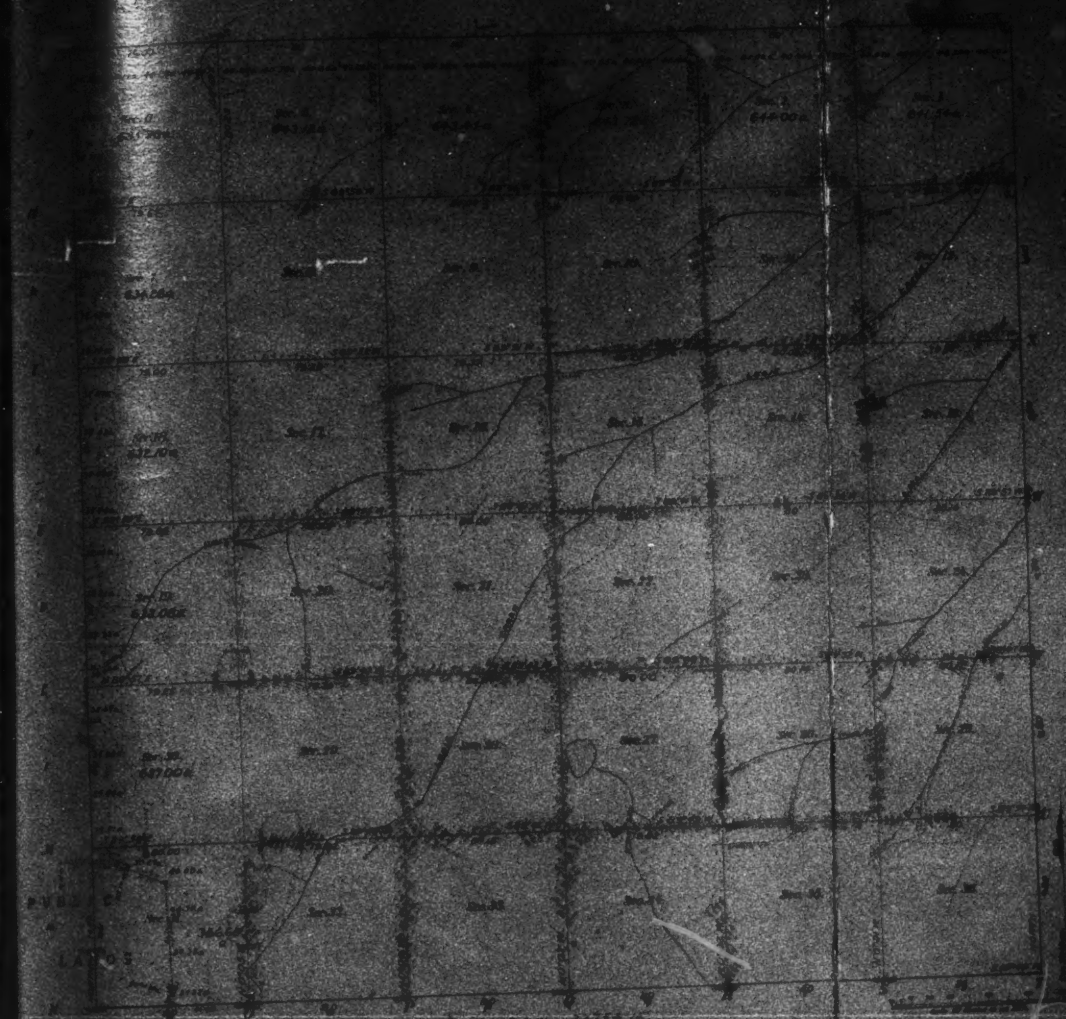
Reflected Indian Reservation
 Surveyed by O.B. Inman in 1893.

Section	Original Survey	Original Date	Original Surveyor	Original Date	Original Surveyor
1	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
2	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
3	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
4	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
5	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
6	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
7	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
8	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
9	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
10	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
11	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
12	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
13	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
14	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
15	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
16	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
17	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
18	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
19	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
20	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
21	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
22	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
23	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
24	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
25	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
26	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
27	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
28	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
29	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
30	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
31	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
32	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
33	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
34	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
35	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith
36	March 12, 1890	March 12, 1890	Wm. C. Smith	March 12, 1890	Wm. C. Smith

The above map of Township No. 7 North, of Range No. 15 East of the Willamette Meridian, Washington, is strictly conformable to the field notes of the survey thereof on file in this Office which have been examined and approved.
 Surveyor General's Office
 Olympia, Washington
 February 3, 1904

O. K. Kugler
 Surveyor General, Washington

Ship N 7 North Range N 10 East Williams Portland Washington

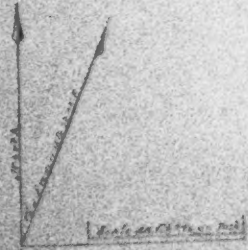
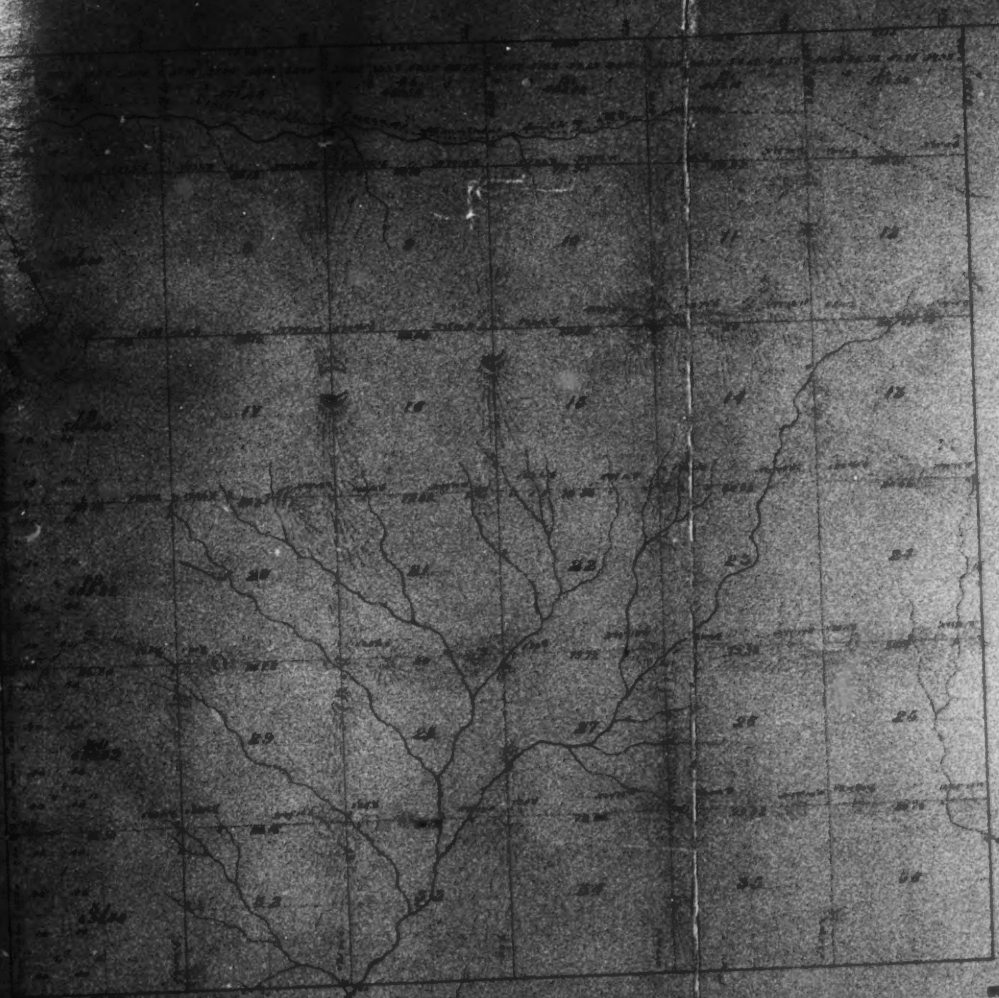


Section	Acres	Owner	Value	Assessment
1	40.00	George C. Miller	10.00	10.00
2	40.00	George C. Miller	10.00	10.00
3	40.00	George C. Miller	10.00	10.00
4	40.00	George C. Miller	10.00	10.00
5	40.00	George C. Miller	10.00	10.00
6	40.00	George C. Miller	10.00	10.00
7	40.00	George C. Miller	10.00	10.00
8	40.00	George C. Miller	10.00	10.00
9	40.00	George C. Miller	10.00	10.00
10	40.00	George C. Miller	10.00	10.00
11	40.00	George C. Miller	10.00	10.00
12	40.00	George C. Miller	10.00	10.00
13	40.00	George C. Miller	10.00	10.00
14	40.00	George C. Miller	10.00	10.00
15	40.00	George C. Miller	10.00	10.00
16	40.00	George C. Miller	10.00	10.00
17	40.00	George C. Miller	10.00	10.00
18	40.00	George C. Miller	10.00	10.00
19	40.00	George C. Miller	10.00	10.00
20	40.00	George C. Miller	10.00	10.00
21	40.00	George C. Miller	10.00	10.00
22	40.00	George C. Miller	10.00	10.00
23	40.00	George C. Miller	10.00	10.00
24	40.00	George C. Miller	10.00	10.00
25	40.00	George C. Miller	10.00	10.00
26	40.00	George C. Miller	10.00	10.00
27	40.00	George C. Miller	10.00	10.00
28	40.00	George C. Miller	10.00	10.00
29	40.00	George C. Miller	10.00	10.00
30	40.00	George C. Miller	10.00	10.00
31	40.00	George C. Miller	10.00	10.00
32	40.00	George C. Miller	10.00	10.00
33	40.00	George C. Miller	10.00	10.00
34	40.00	George C. Miller	10.00	10.00
35	40.00	George C. Miller	10.00	10.00
36	40.00	George C. Miller	10.00	10.00
37	40.00	George C. Miller	10.00	10.00
38	40.00	George C. Miller	10.00	10.00
39	40.00	George C. Miller	10.00	10.00
40	40.00	George C. Miller	10.00	10.00
41	40.00	George C. Miller	10.00	10.00
42	40.00	George C. Miller	10.00	10.00
43	40.00	George C. Miller	10.00	10.00
44	40.00	George C. Miller	10.00	10.00
45	40.00	George C. Miller	10.00	10.00
46	40.00	George C. Miller	10.00	10.00
47	40.00	George C. Miller	10.00	10.00
48	40.00	George C. Miller	10.00	10.00
49	40.00	George C. Miller	10.00	10.00
50	40.00	George C. Miller	10.00	10.00
51	40.00	George C. Miller	10.00	10.00
52	40.00	George C. Miller	10.00	10.00
53	40.00	George C. Miller	10.00	10.00
54	40.00	George C. Miller	10.00	10.00
55	40.00	George C. Miller	10.00	10.00
56	40.00	George C. Miller	10.00	10.00
57	40.00	George C. Miller	10.00	10.00
58	40.00	George C. Miller	10.00	10.00
59	40.00	George C. Miller	10.00	10.00
60	40.00	George C. Miller	10.00	10.00
61	40.00	George C. Miller	10.00	10.00
62	40.00	George C. Miller	10.00	10.00
63	40.00	George C. Miller	10.00	10.00
64	40.00	George C. Miller	10.00	10.00
65	40.00	George C. Miller	10.00	10.00
66	40.00	George C. Miller	10.00	10.00
67	40.00	George C. Miller	10.00	10.00
68	40.00	George C. Miller	10.00	10.00
69	40.00	George C. Miller	10.00	10.00
70	40.00	George C. Miller	10.00	10.00
71	40.00	George C. Miller	10.00	10.00
72	40.00	George C. Miller	10.00	10.00
73	40.00	George C. Miller	10.00	10.00
74	40.00	George C. Miller	10.00	10.00
75	40.00	George C. Miller	10.00	10.00
76	40.00	George C. Miller	10.00	10.00
77	40.00	George C. Miller	10.00	10.00
78	40.00	George C. Miller	10.00	10.00
79	40.00	George C. Miller	10.00	10.00
80	40.00	George C. Miller	10.00	10.00
81	40.00	George C. Miller	10.00	10.00
82	40.00	George C. Miller	10.00	10.00
83	40.00	George C. Miller	10.00	10.00
84	40.00	George C. Miller	10.00	10.00
85	40.00	George C. Miller	10.00	10.00
86	40.00	George C. Miller	10.00	10.00
87	40.00	George C. Miller	10.00	10.00
88	40.00	George C. Miller	10.00	10.00
89	40.00	George C. Miller	10.00	10.00
90	40.00	George C. Miller	10.00	10.00
91	40.00	George C. Miller	10.00	10.00
92	40.00	George C. Miller	10.00	10.00
93	40.00	George C. Miller	10.00	10.00
94	40.00	George C. Miller	10.00	10.00
95	40.00	George C. Miller	10.00	10.00
96	40.00	George C. Miller	10.00	10.00
97	40.00	George C. Miller	10.00	10.00
98	40.00	George C. Miller	10.00	10.00
99	40.00	George C. Miller	10.00	10.00
100	40.00	George C. Miller	10.00	10.00

The above map of Township 2 N. Range 10 E. is a true and correct copy of the original map on file in the office of the Surveyor General, Washington, D.C. and is hereby certified to be correct.

Surveyor General, Washington, D.C.

W. C. Miller



SURVEYOR GENERAL'S OFFICE,

OLYMPIA, WASHINGTON TERRITORY.

January 27th 1888.

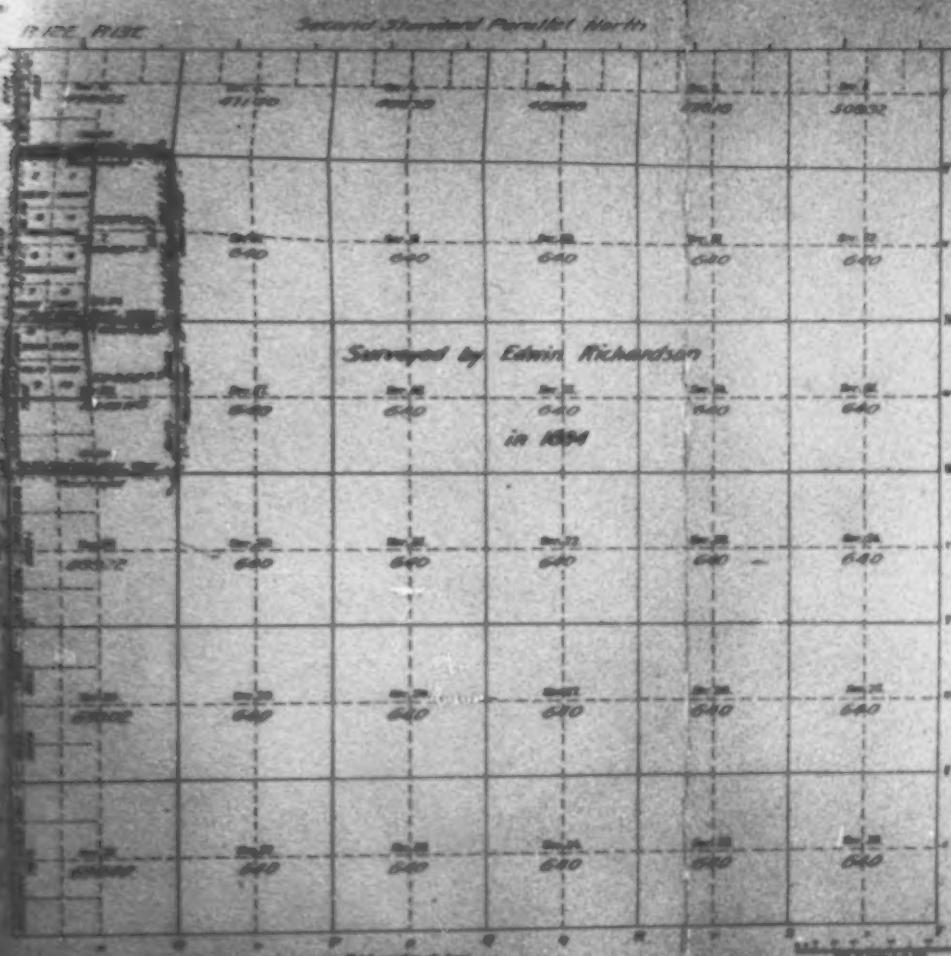
The above Map of Township No. 3 North Range No. 12 West of the Washington Territory is strictly conformable to the following of the survey thereof, was in file in this office, which have been examined and approved

Wm. H. Wickham

20

Section	Owner	Acres	Value	Remarks
1	John J. ...	36
2	...	36
3	...	36
4	...	36
5	...	36
6	...	36
7	...	36
8	...	36
9	...	36
10	...	36
11	...	36
12	...	36
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14	...	36
15	...	36
16	...	36
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Township No 8 North, Range No 10 East, Willamette Meridian, Washington



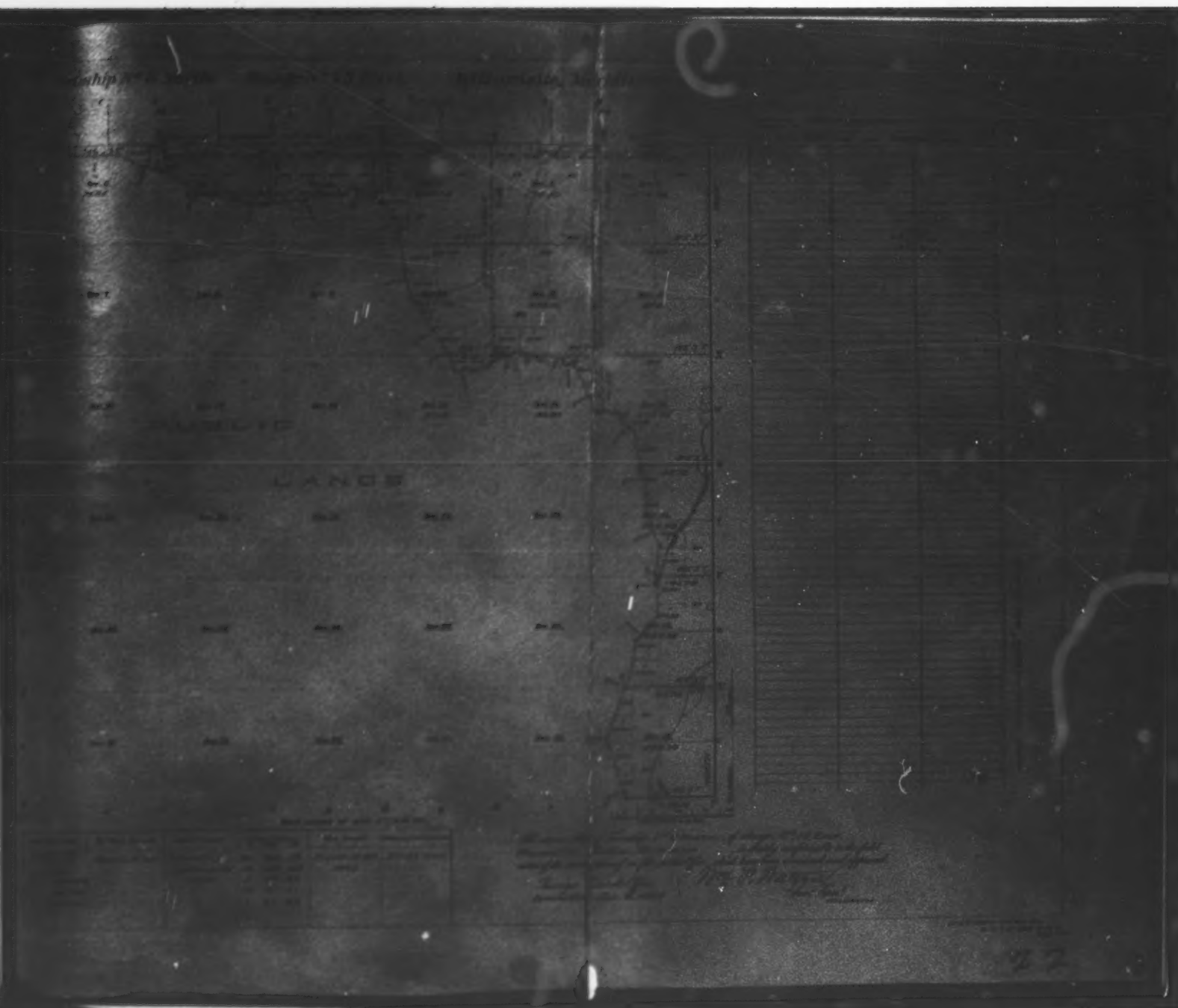
Surveyed by Edwin Richardson
in 1894

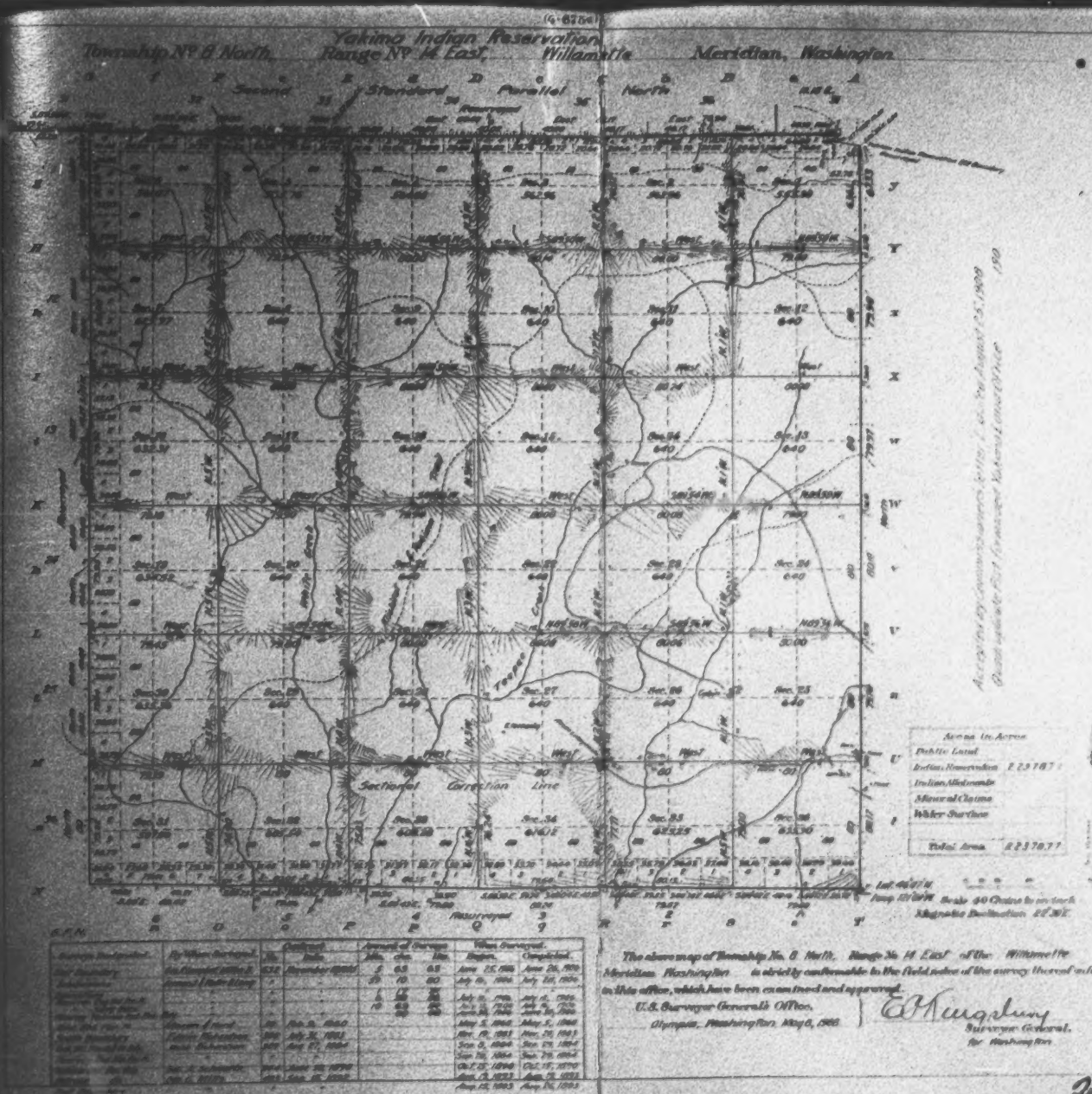
Section	Owner	Acres	Value	Notes
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Edwin Richardson
Surveyor
1894

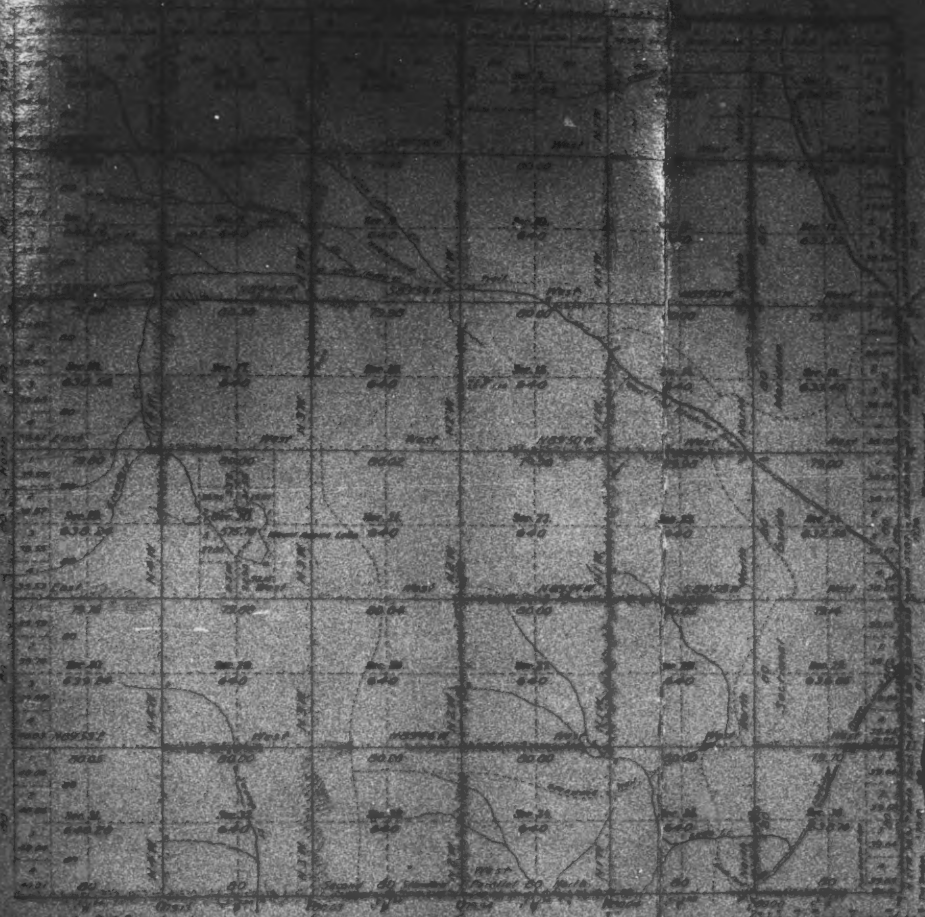
Section	Owner	Acres	Value	Notes
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Edwin Richardson
Surveyor
1894





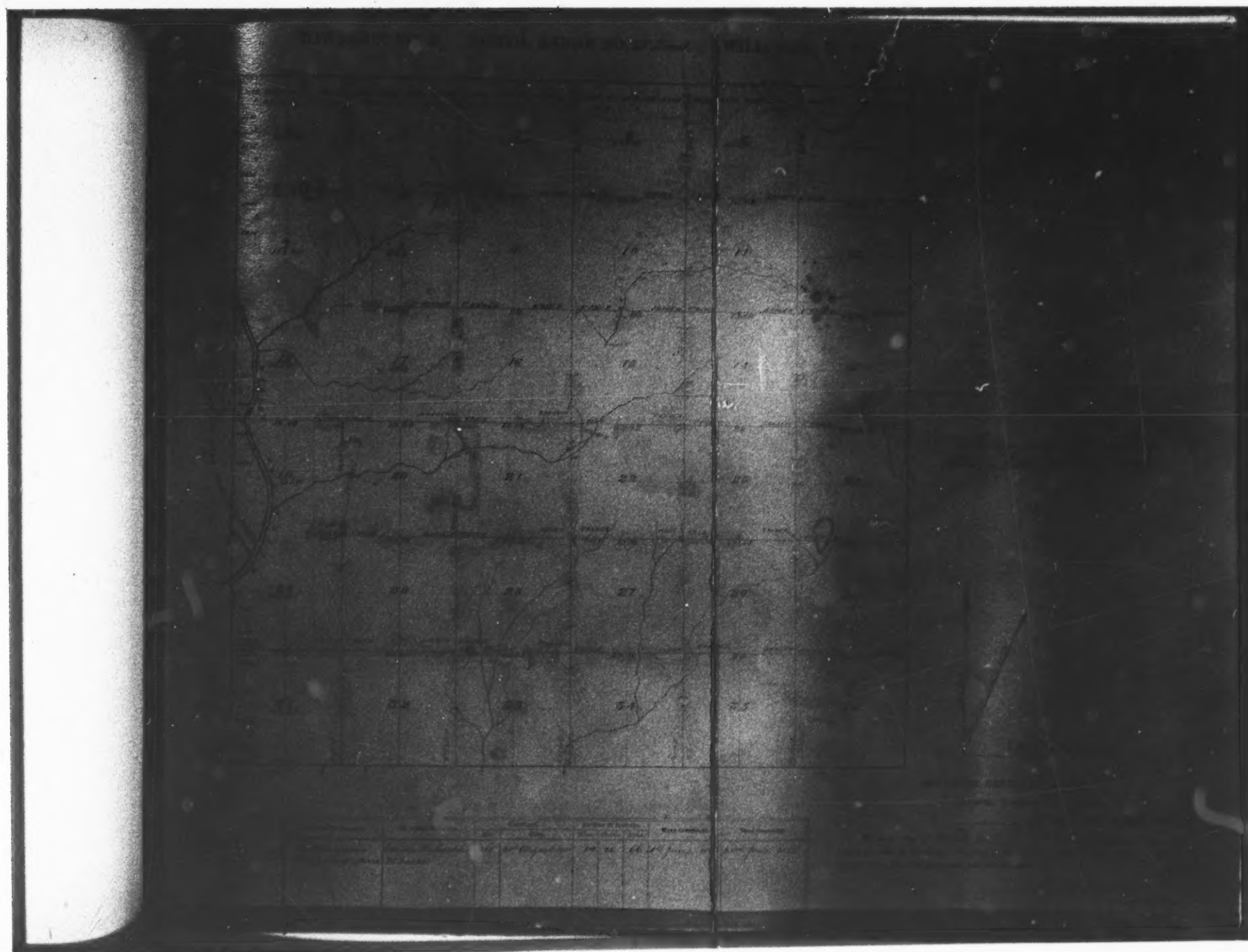
Township 10 N Range 10 E Section 10
 Williams, Montana



Total in Acres	
Land	100.00
Water	0.00
Total from Observation	100.00

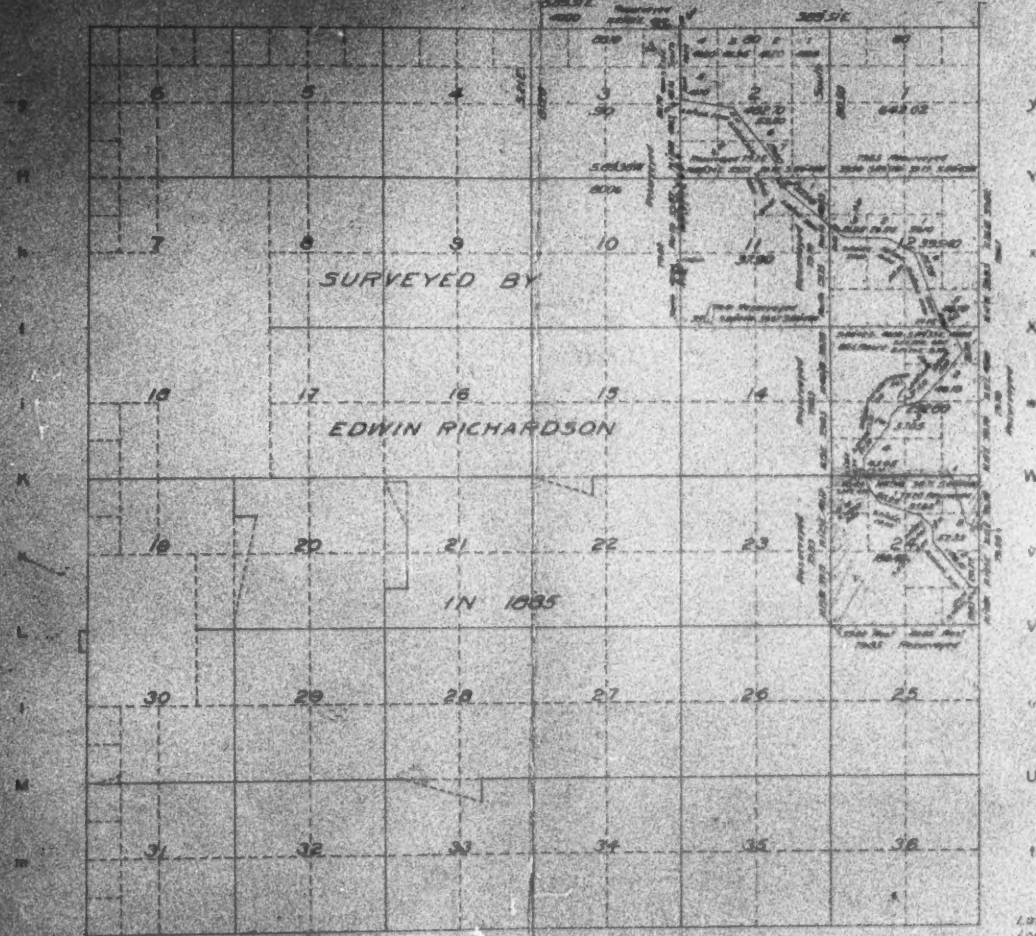
Section	By Whom Surveyed	Date of Survey	Area in Acres	Remarks
1	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
2	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
3	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
4	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
5	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
6	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
7	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
8	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
9	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
10	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
11	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
12	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
13	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
14	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
15	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
16	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
17	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
18	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
19	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
20	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
21	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
22	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
23	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
24	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
25	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
26	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
27	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
28	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
29	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
30	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
31	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
32	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
33	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
34	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
35	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892
36	Wm. H. H. H.	1892	11.25	Surveyed by Wm. H. H. H. 1892

Surveyed by Wm. H. H. H. 1892
 Williams, Montana
 Surveyed by Wm. H. H. H. 1892
 Williams, Montana



Yakima Indian Reservation

617



Section	Acres
Section 10	20.00
Section 11	20.00
Section 12	20.00
Section 13	20.00
Section 14	20.00
Section 15	20.00
Section 16	20.00
Section 17	20.00
Section 18	20.00
Section 19	20.00
Section 20	20.00
Section 21	20.00
Section 22	20.00
Section 23	20.00
Section 24	20.00
Section 25	20.00
Section 26	20.00
Section 27	20.00
Section 28	20.00
Section 29	20.00
Section 30	20.00
Section 31	20.00
Section 32	20.00
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Section 37	20.00
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Section 41	20.00
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Section 46	20.00
Section 47	20.00
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Section 81	20.00
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Section 83	20.00
Section 84	20.00
Section 85	20.00
Section 86	20.00
Section 87	20.00
Section 88	20.00
Section 89	20.00
Section 90	20.00
Section 91	20.00
Section 92	20.00
Section 93	20.00
Section 94	20.00
Section 95	20.00
Section 96	20.00
Section 97	20.00
Section 98	20.00
Section 99	20.00
Section 100	20.00

Scale 40 Chords to an inch
May 25, 1885

N O P Q R S T

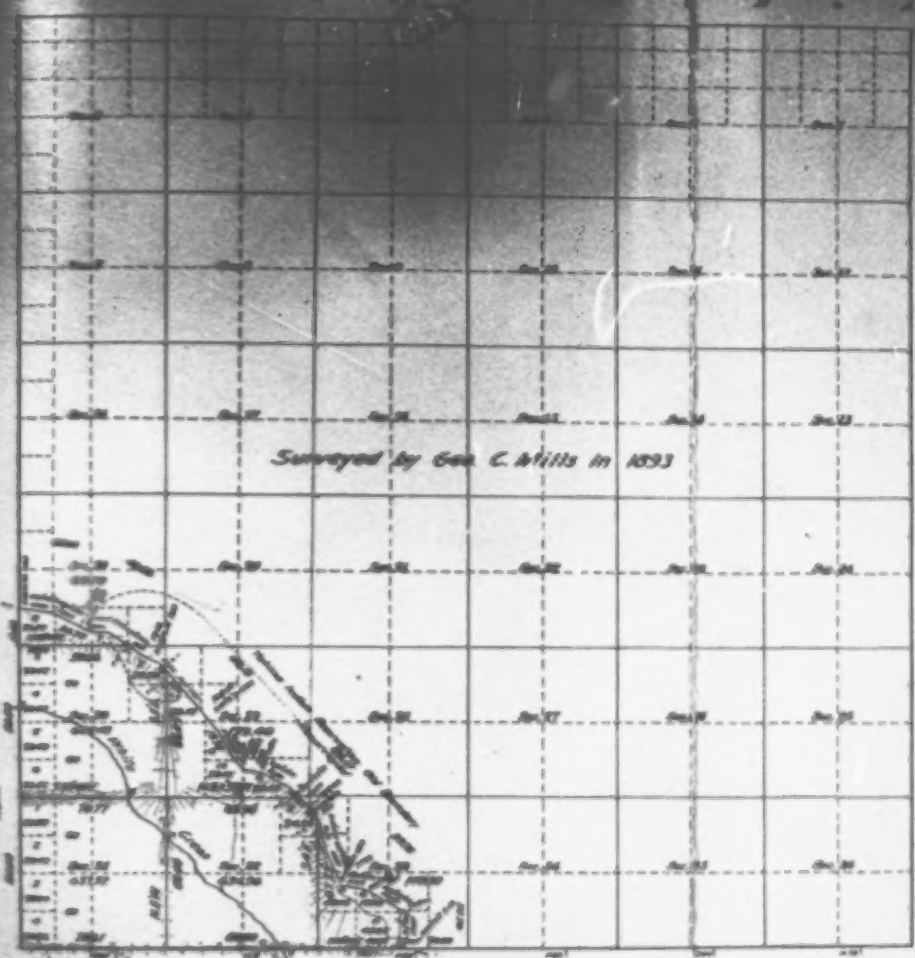
Contract No.	Date	Amount of Survey	When Surveyed
107	March 25, 1884	3 38 57	May 5, 1884 May 13, 1884
108	"	5 44 48	"
109	"	10 77 34	"
110	Aug 27, 1885	"	May 26, 1885 May 30, 1885
111	June 20, 1886	"	Oct 22, 1886 Oct 25, 1886
112	Jan 15, 1887	"	Oct 15, 1887 Oct 18, 1887
113	May 22, 1888	41 11	May 5, 1888 May 13, 1888

The above map of Township No. 9 North, of Range No. 13 East of the Willamette Meridian, Washington, is a true and correct copy of the field notes of the survey thereof, on file in this Office, which have been examined and approved by the Surveyor General's Office, Olympia, Washington, October 20, 1885.

E. H. H. H.
Surveyor General, Washington

26

Range No. 9 North Range No. 14 East Township No. 14 North Meridian, Washington



Surveyed by Geo. C. A. Mills in 1893

Accepted by Commissioners T. Nelson August 25, 1900
Quadrangle No. 141 for the National Land Office 19

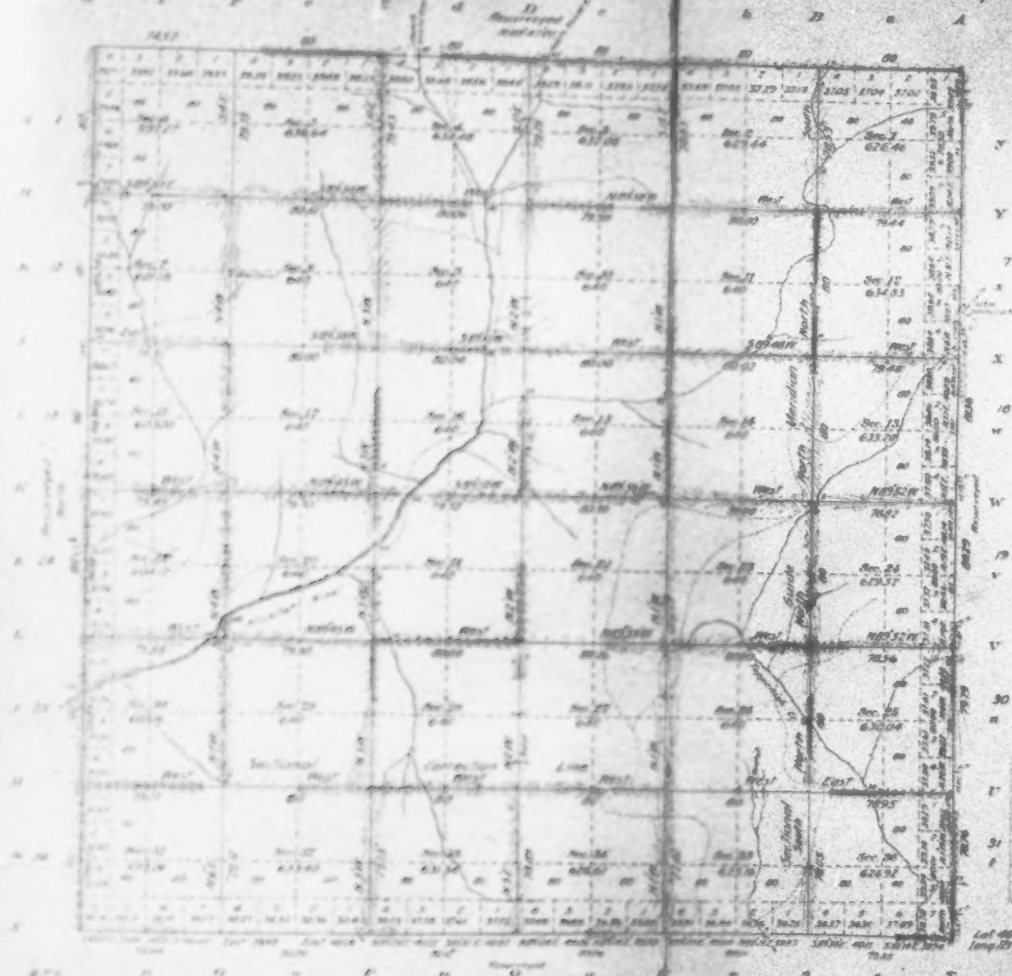
Areas in Acres	
Public Land	
Indian Reservations	291,671
Indian Allotments	
Mineral Claims	
Other Surfaces	
Total Area	291,671

141-142-143
Long 81° 30' W Scale 40 Chas to an inch
Mean Magnetic Inclination 11° 34' N.

Sums of		Section		Amount of Survey		When Completed	
Range	Section	No.	Acres	Acres	Acres	By	By
Range No. 9 North	Section 1	1	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 1	1	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 2	2	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 3	3	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 4	4	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 5	5	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 6	6	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 7	7	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 8	8	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 9	9	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 10	10	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 11	11	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 12	12	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 13	13	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 14	14	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 15	15	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 16	16	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 17	17	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 18	18	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 19	19	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 20	20	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 21	21	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 22	22	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 23	23	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 24	24	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 25	25	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 26	26	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 27	27	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 28	28	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 29	29	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 30	30	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 31	31	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 32	32	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 33	33	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 34	34	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 35	35	36	36	36	July 1, 1890	July 1, 1890
Range No. 14 East	Section 36	36	36	36	36	July 1, 1890	July 1, 1890

The above map of Township No. 14 North Range No. 14 East of the Meridian
Meridian, Washington is strictly conformable to the field notes of the survey shown within
in this office, which have been examined and approved.
U.S. Surveyor General's Office,
Olympia, Washington, May 6, 1900.
E. H. Kunglun
Surveyor General
for Washington

Township No. 10 North, Yakima Indian Reservation, Range No. 13 East, Willamette Meridian, Washington



Areas in Acres	
Public Land	
Indian Reservation	2760.25
Indian Allotments	
Mineral Claims	
Other Surfaces	
Total Area	2760.25

Lat. 46° 17' N.
Long. 120° 59' W.
Scale 60 Chains to an inch
Magnetic Declination 26° 30' E.

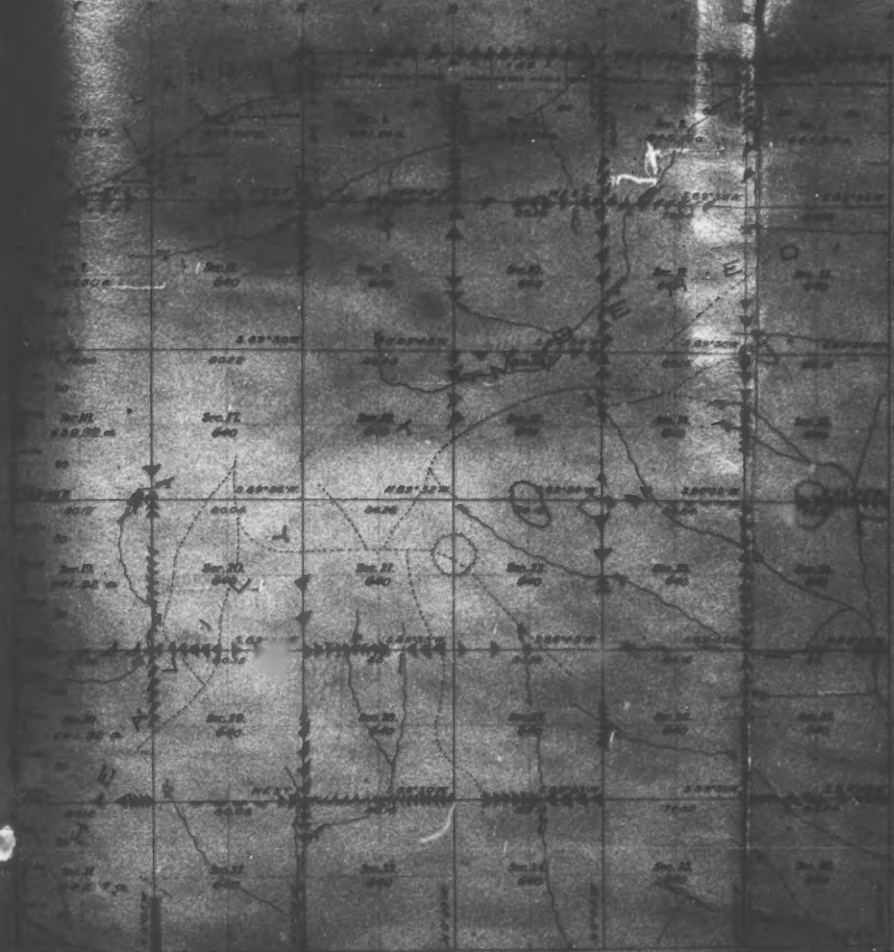
Surveyors Designated		Completed		Surveyors Designated		Completed	
Surveyors	Designated	Surveyors	Completed	Surveyors	Designated	Surveyors	Completed
Surveyors	Designated	Surveyors	Completed	Surveyors	Designated	Surveyors	Completed
Surveyors	Designated	Surveyors	Completed	Surveyors	Designated	Surveyors	Completed
Surveyors	Designated	Surveyors	Completed	Surveyors	Designated	Surveyors	Completed

The map of Township No. 10 North, Range No. 13 East, of the Willamette Meridian, Washington, is hereby confirmed to the field notes of the survey thereof made by this office, which have been examined and approved.

U.S. Surveyor General's Office,
Olympia, Washington
February 5, 1900.

W. H. McMillan
Surveyor General
for Washington

89

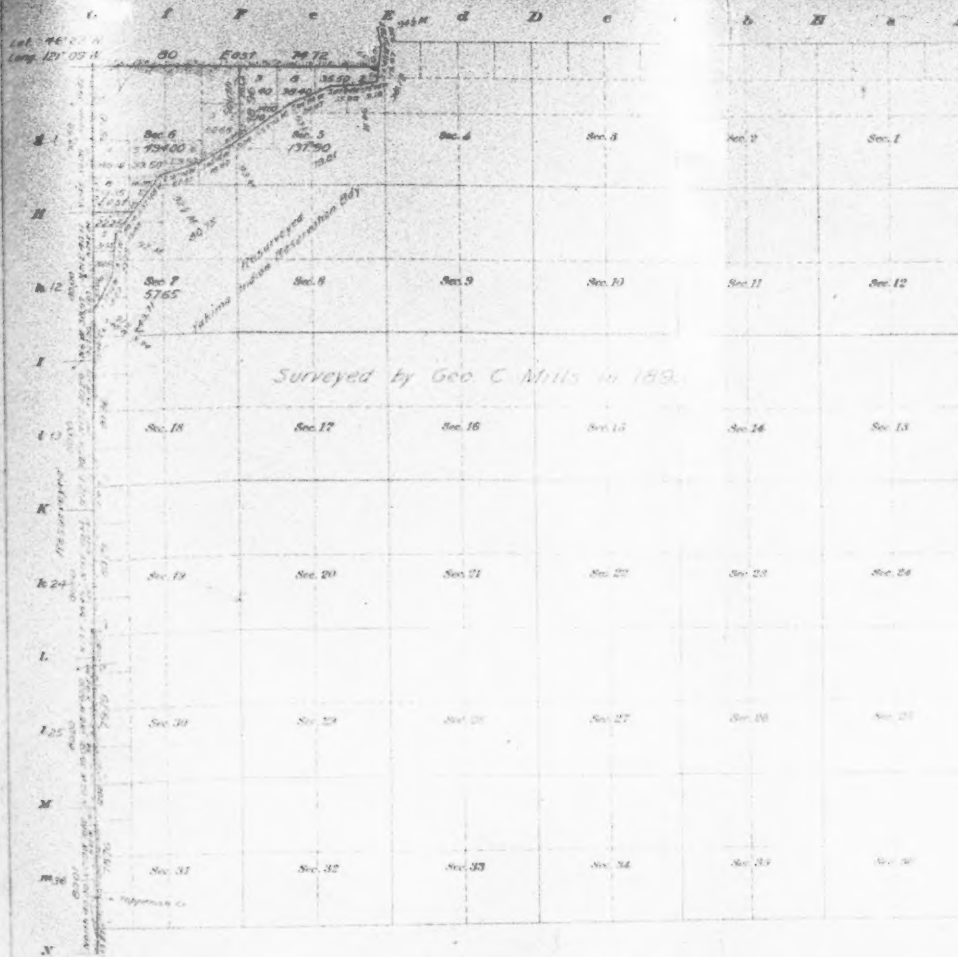


Accepted by Commissioners of the Board of Education, May 2, 1895

30

64-67561
 Township No 10 North, Range No 14 East, Yakima Indian Reservation, Willamette Meridian, Washington

622



Area in Acres

Public Land	
Indian Reservation	4,000.00
Indian Allotment	
Mineral Rights	
Water Rights	
Total Area	4,000.00

Scale 40 Chains to an Inch
 Magnetic Declination 42° 33' E

Survey Designated	By Whom Surveyed	No.	Contract Date	Amount of Survey	When Surveyed	When Completed
				Sq. Mts.	Chs.	Days
North Boundary	Geo. C. Mills	1	September 12, 1893	1.24	12	2,000.00
Section Lines				4.00	21	
Connect. Lines				1.00	40	
Resurvey W. Bdy	Jacob Stevenson	209	August 12, 1894	1.00	10	2,000.00
West Boundary	Geo. C. Mills	2	Sept. 15, 1893	1.00	10	2,000.00
Resurvey W. Bdy						

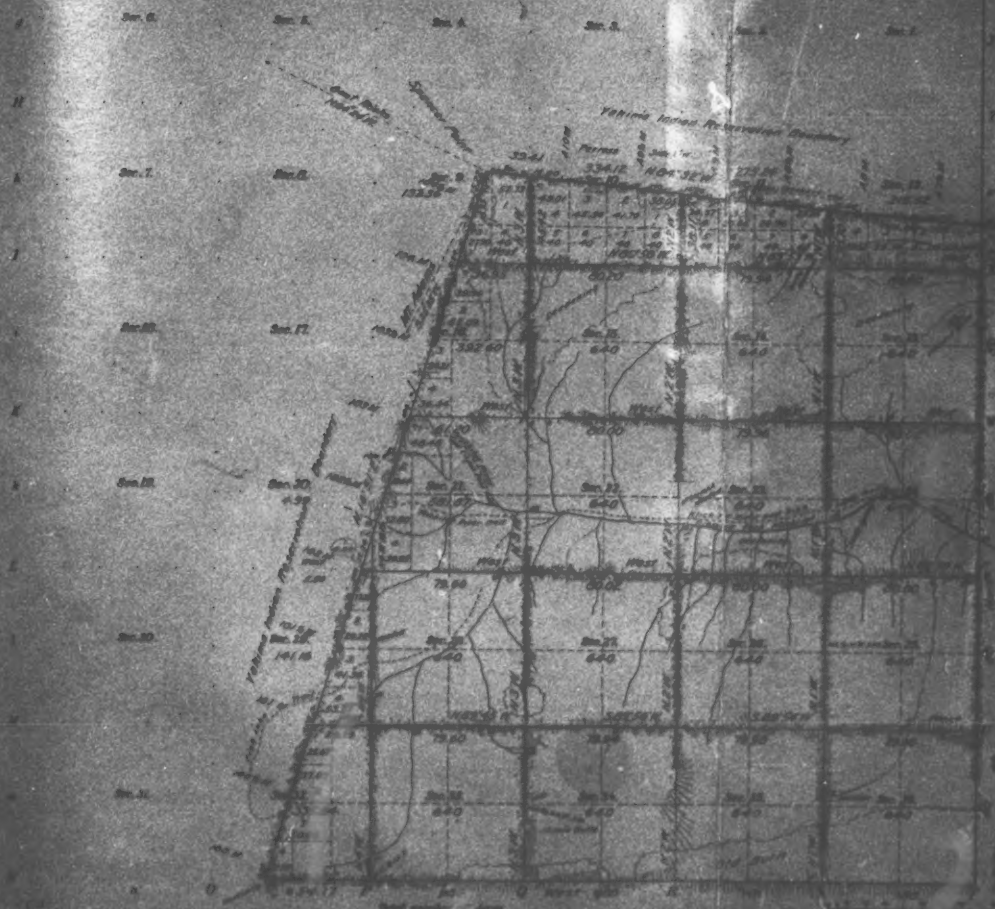
The above mapped Township No. 10 North Range No. 14 East, of the Willamette Meridian, Washington, is hereby confirmed to the field notes of the survey thereof made in this office, which have been examined and approved.

U.S. Survey General's Office,
 Olympia, Washington, May 6, 1905

J. C. Merriam
 Surveyor General
 for Washington

12

14-0780
 Township No. 11 North, Range No. 12 East, Yakima Indian Reservation, Western Meridian, Washington

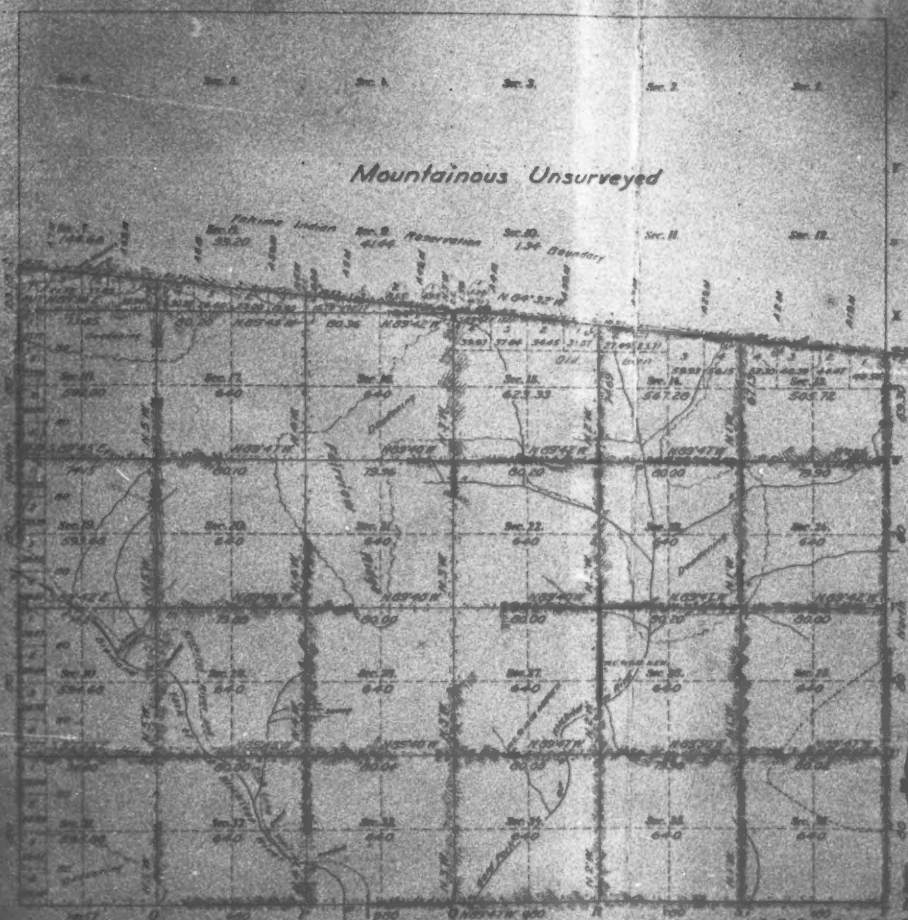


Section	Acres	Owner	Section	Acres	Owner
Section 1	36.00	Yakima Indian Reservation	Section 2	36.00	Yakima Indian Reservation
Section 3	36.00	Yakima Indian Reservation	Section 4	36.00	Yakima Indian Reservation
Section 5	36.00	Yakima Indian Reservation	Section 6	36.00	Yakima Indian Reservation
Section 7	36.00	Yakima Indian Reservation	Section 8	36.00	Yakima Indian Reservation
Section 9	36.00	Yakima Indian Reservation	Section 10	36.00	Yakima Indian Reservation
Section 11	36.00	Yakima Indian Reservation	Section 12	36.00	Yakima Indian Reservation
Section 13	36.00	Yakima Indian Reservation	Section 14	36.00	Yakima Indian Reservation
Section 15	36.00	Yakima Indian Reservation	Section 16	36.00	Yakima Indian Reservation
Section 17	36.00	Yakima Indian Reservation	Section 18	36.00	Yakima Indian Reservation
Section 19	36.00	Yakima Indian Reservation	Section 20	36.00	Yakima Indian Reservation
Section 21	36.00	Yakima Indian Reservation	Section 22	36.00	Yakima Indian Reservation
Section 23	36.00	Yakima Indian Reservation	Section 24	36.00	Yakima Indian Reservation
Section 25	36.00	Yakima Indian Reservation	Section 26	36.00	Yakima Indian Reservation
Section 27	36.00	Yakima Indian Reservation	Section 28	36.00	Yakima Indian Reservation
Section 29	36.00	Yakima Indian Reservation	Section 30	36.00	Yakima Indian Reservation
Section 31	36.00	Yakima Indian Reservation	Section 32	36.00	Yakima Indian Reservation
Section 33	36.00	Yakima Indian Reservation	Section 34	36.00	Yakima Indian Reservation
Section 35	36.00	Yakima Indian Reservation	Section 36	36.00	Yakima Indian Reservation

Surveyed by J. H. ...
 Date of Survey ...
 ...
 ...

Township No. 11 North Range No. 13 East Willamette Meridian, Washington

Mountainous Unserved



Section	Area	Owner	Acres	Value	Notes
Sec. 1					
Sec. 2					
Sec. 3					
Sec. 4					
Sec. 5					
Sec. 6					
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Sec. 8					
Sec. 9					
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Sec. 100					

Area in Acres	Value
Indian Reservation	15239.21
Total Area	15239.21

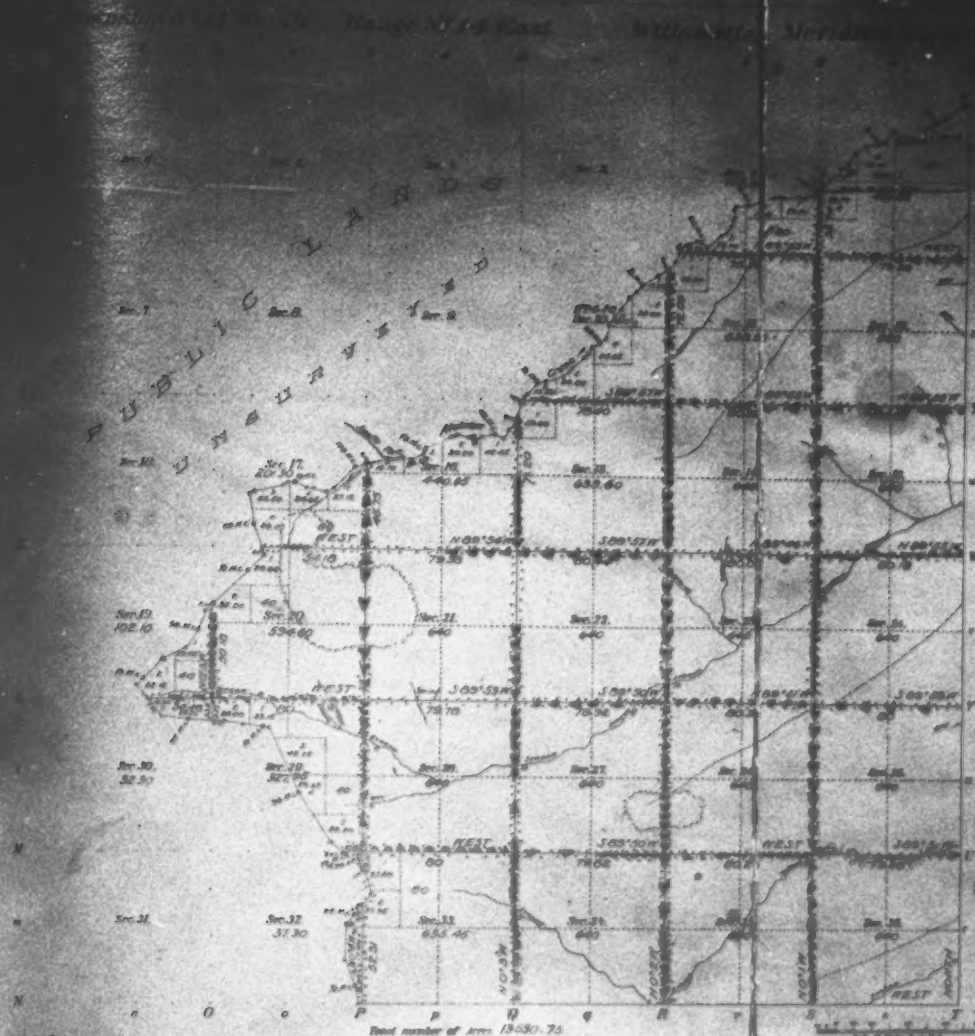
Section	Area	Owner	Acres	Value	Notes
Sec. 1					
Sec. 2					
Sec. 3					
Sec. 4					
Sec. 5					
Sec. 6					
Sec. 7					
Sec. 8					
Sec. 9					
Sec. 10					
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Sec. 95					
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Sec. 98					
Sec. 99					
Sec. 100					

The above map of Township No. 11 North, Range No. 13 East, Willamette Meridian, Washington, is a true and correct copy of the original map filed in the office of the Surveyor General, Oregon, at Salem, Oregon, on the 10th day of July, 1905.

Surveyor General, Oregon
 Deputy Surveyor General, Oregon

Accepted by Commissioners after L. dated January 10, 1905.

33



Recorded	By Whom Surveyed	Size of Section	Amount of Survey	When Surveyed	Area description
Surveyed by	Geo. C. Mills	1740 64 14 00	97 40 85	Nov. 18 1895	21° 40 East
Surveyed by			10 67 13		

The above map of Township 14 North of Range 14 East is hereby confirmed to the field with the following: That section 10 of the survey being in file in this office which have been examined and approved.

Surveyor General's Office
Chicago, Ill.
April 10, 1896

W. P. H. H. H.
"Sec. Gen."

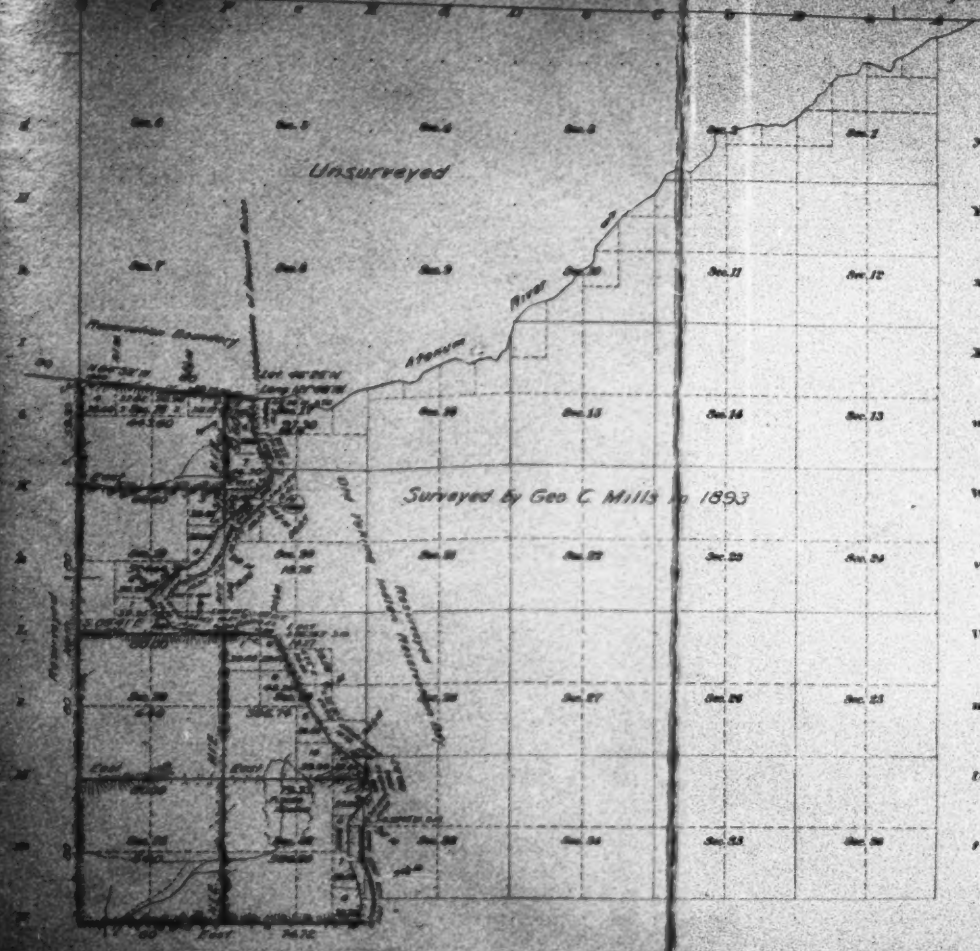
JAMES A. H. H.

G. C. April 4, 1896 - G. C. C. C. C.

Copyright by Government from U. S. Land Map 1896

34

Yakima Indian Reservation
 Township No. 11 North, Range No. 14 East, Willamette Meridian, Washington



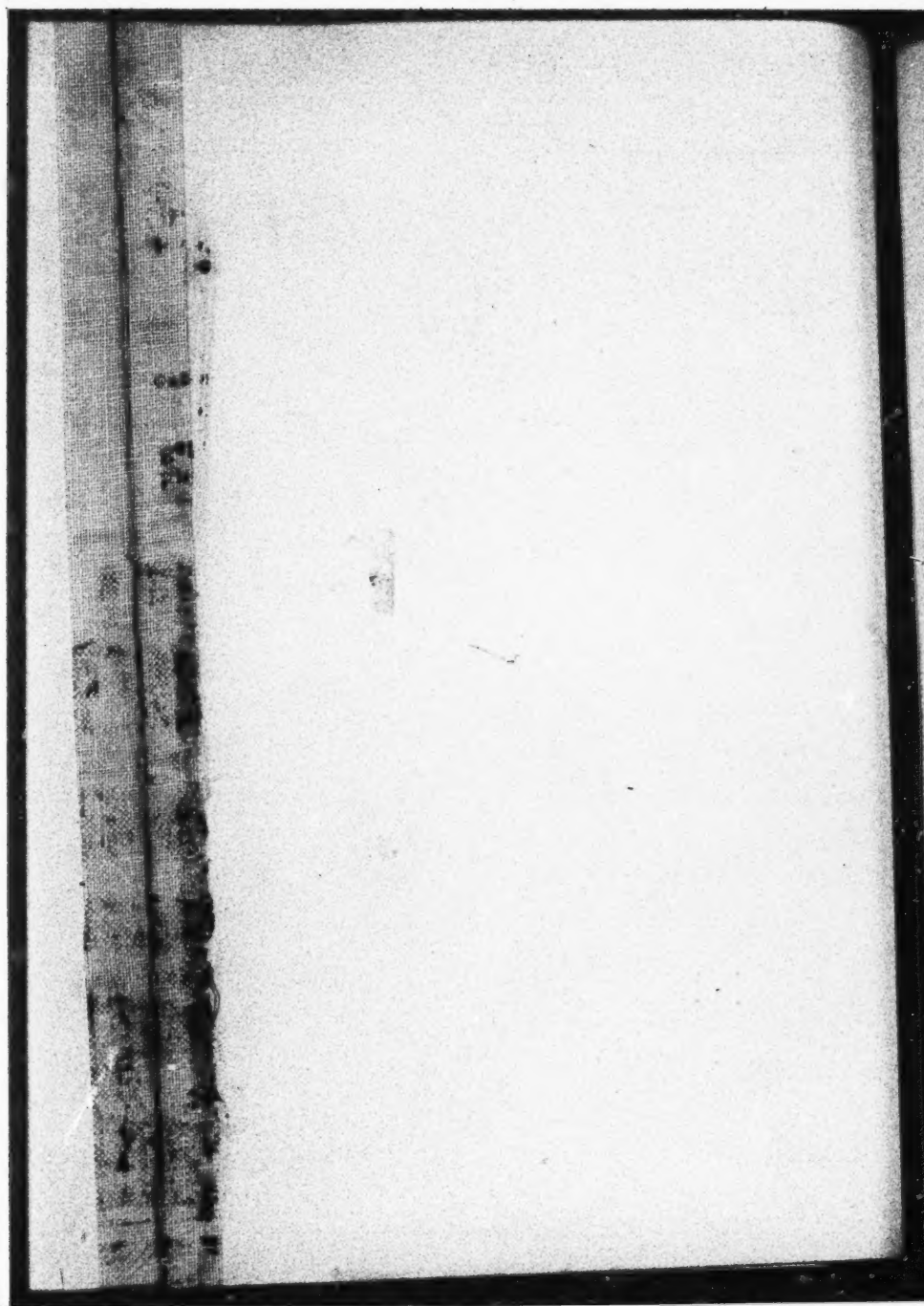
Areas in Acres	
Public Land	
Indian Reservation	33,764.3
Indian Allotments	
Mineral Claims	
Water Surface	
Total Area	33,764.3

Scale 40 miles from the center of the reservation
 Magnetic Declination 12° 34' E.

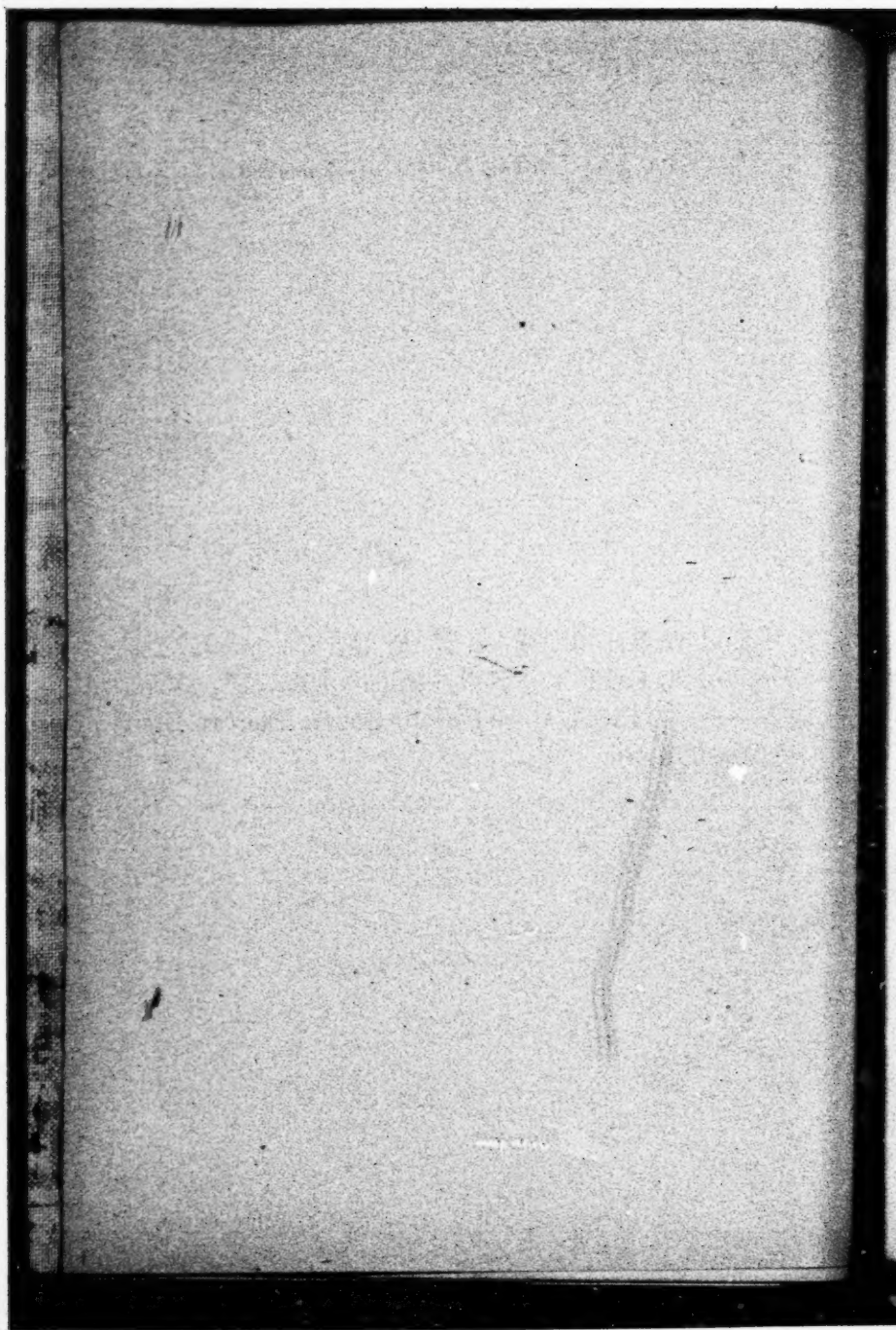
Section	By whom surveyed	When surveyed	Area in Acres	When surveyed	By whom surveyed
1	Geo. C. Mills	1893	360	1	Geo. C. Mills
2	Geo. C. Mills	1893	360	2	Geo. C. Mills
3	Geo. C. Mills	1893	360	3	Geo. C. Mills
4	Geo. C. Mills	1893	360	4	Geo. C. Mills
5	Geo. C. Mills	1893	360	5	Geo. C. Mills
6	Geo. C. Mills	1893	360	6	Geo. C. Mills
7	Geo. C. Mills	1893	360	7	Geo. C. Mills
8	Geo. C. Mills	1893	360	8	Geo. C. Mills
9	Geo. C. Mills	1893	360	9	Geo. C. Mills
10	Geo. C. Mills	1893	360	10	Geo. C. Mills
11	Geo. C. Mills	1893	360	11	Geo. C. Mills
12	Geo. C. Mills	1893	360	12	Geo. C. Mills
13	Geo. C. Mills	1893	360	13	Geo. C. Mills
14	Geo. C. Mills	1893	360	14	Geo. C. Mills
15	Geo. C. Mills	1893	360	15	Geo. C. Mills
16	Geo. C. Mills	1893	360	16	Geo. C. Mills
17	Geo. C. Mills	1893	360	17	Geo. C. Mills
18	Geo. C. Mills	1893	360	18	Geo. C. Mills
19	Geo. C. Mills	1893	360	19	Geo. C. Mills
20	Geo. C. Mills	1893	360	20	Geo. C. Mills
21	Geo. C. Mills	1893	360	21	Geo. C. Mills
22	Geo. C. Mills	1893	360	22	Geo. C. Mills
23	Geo. C. Mills	1893	360	23	Geo. C. Mills
24	Geo. C. Mills	1893	360	24	Geo. C. Mills
25	Geo. C. Mills	1893	360	25	Geo. C. Mills
26	Geo. C. Mills	1893	360	26	Geo. C. Mills
27	Geo. C. Mills	1893	360	27	Geo. C. Mills
28	Geo. C. Mills	1893	360	28	Geo. C. Mills
29	Geo. C. Mills	1893	360	29	Geo. C. Mills
30	Geo. C. Mills	1893	360	30	Geo. C. Mills

The above map of Township No. 11 North, Range No. 14 East, of the Willamette Meridian, Washington, is hereby confirmed to the field notes of the survey thereof in the office, which have been examined and approved.
 U.S. Surveyor General's Office,
 Olympia, Washington, May 4, 1894.
 E. C. Kunglberg
 Surveyor General,
 for Washington.

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[Endorsed]: U. S. vs. N. P. Ry. Co. et al. Defendants' Exhibit "K." Filed June 28, 1910.
_____, Clerk, U. S. Circuit Court, Eastern Dist.
of Washington.



No. 1916.

THE NORTHERN PACIFIC RAILWAY COMPANY, THE MERCANTILE Trust Company, Henry Yeackel and Flora Yeackel, His Wife; Wilbur S. Badley and Florence C. Badley, His Wife; C. D. Wise and — Wise, His Wife, and R. D. McCully, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing six hundred and twenty-seven (627) pages numbered from and including one (1) to and including (627), comprised in the preceding three (3) volumes, marked, respectively, Vol. I, Vol. II, and Vol. III, to be a full, true and correct copy of the Printed Transcript of Record upon appeal from the United States Circuit Court for the Eastern District of Washington, Eastern Division, in the above-entitled case, as the original thereof remains on file and of record in my office, the said copy having been printed under my supervision pursuant to the provisions of the twenty-third rule of the Rules of Practice of the said Circuit Court of Appeals.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this thirteenth day of December, A. D. 1911.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

U. S. 227 U. S.

Statement of the Case.

NORTHERN PACIFIC RAILWAY COMPANY v. UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 500. Argued January 8, 9, 1913.—Decided February 24, 1913.

While punctuation is a fallible standard of the meaning of a statute, the location of commas in the description of a boundary line may be considered.

Where there is confusion in the calls bounding land described in a treaty, the effort of this court should be to execute the intention of the treaty makers.

In construing a treaty with Indians ceding lands the court will consider the differences in power and intelligence of the Indians and will not so construe it as to make it an instrument of fraud to deprive the Indians of more than they understood they were ceding.

The western boundary of the reservation of the Yakima Indians reserved by treaty of 1855 is defined by the greater boundaries of nature which the Indians understood and estimated, and so held that the main ridge of the Cascade Mountains is the western boundary and not the inferior ridges and spurs.

The action of the Land Department in approving a survey of a treaty reservation must be given strong consideration, but is not always controlling, and *quere* whether the rule that such action should only be disturbed for clear and convincing reason applies when the Government is proceeding in behalf of the Indians.

The rule that resolves doubts in favor of patents issued by the United States does not apply to those issued for land within the boundaries of an Indian reservation fixed by treaty.

The act of March 2, 1896, 29 Stat. 42, was one of a series of acts and applies only to public lands open to entry and not to lands within an Indian reservation.

Purchasers from railroads, even though in good faith, are not *bona fide* purchasers under the public land laws.

191 Fed. Rep. 947, affirmed.

THE facts, which involve the validity of certain patents for land issued to the Northern Pacific Railroad Company and the construction of the treaty of 1855 with the Yakima Indians, are stated in the opinion.

Mr. Charles Donnelly, with whom *Mr. Charles W. Bunn* was on the brief, for appellants.

Mr. Assistant Attorney General Knaebel, with whom *Mr. S. W. Williams* was on the brief, for the United States.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Bill in equity by the United States to annul patents issued May 10, 1895, and January 6, 1896, to the Northern Pacific Railroad Company, and March 5, 1901, and January 4, 1904, to its successor, the Northern Pacific Railway Company, for certain described lands. The foundation of the bill is that the patents were issued by mistake as public lands granted to the railroad company under the act of Congress dated July 2, 1864 (13 Stat. 365, c. 217), the lands actually being, it is alleged by the Government, part of the Yakima Indian Reservation under a treaty with the Yakimas of June 9, 1855 (12 Stat. 951), ratified March 8, 1859, and proclaimed by the President April 18, 1859.

There is no question made of the title of the railroad and railway companies or of their respective vendees other than as the lands fall within or without the reservation. If they were within the boundaries of the reservation they were lands of the Indians; otherwise, public lands of the United States and passed to the companies, respectively, under the act of Congress and the patents issued in pursuance thereof.

The question then is, What were the boundaries of the reservation, or—to use the present tense as the more convenient—what are the boundaries of the reservation?

By article 1 of the treaty the Indians ceded, relinquished and conveyed to the United States a tract of land which was explicitly described, reserving by article 2, from the tract the land included within the following boundaries:

"Commencing on the Yakima River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning."

All of this tract, it is provided, "shall be set apart, and, so far as necessary, surveyed and marked out, for the exclusive use and benefit" of the Indians, as an Indian reservation.

It will be observed that the calls in the description of the tract reserved are very confident and seem to assure certainty by prominent and unmistakable natural monuments. Controversies, however, almost immediately arose, the Indians contending for one location of the calls and enterprising settlers contending for another. The Interior Department ordered a survey, which was made and which is known in this record as the Schwartz survey. Upon this the title of appellants depends. The discontent of the Indians continued and another survey was ordered by the Interior Department to be made by E. C. Barnard. This survey is the foundation of the bill and of the contention of the Government. It was made and reported to the Interior Department with a map delineating the exterior boundaries of the reservation. This report was transmitted to the Speaker of the House of Representatives with a draft of a bill granting authority for the detail by the Secretary of the Interior of an Indian inspector to negotiate an agreement with the Indians for the adjust-

ment of their claim for the lands embraced in the tract claimed by them, containing 293,837 acres, as shown by the Barnard report, that is, for lands without the Schwartz but within the Barnard survey.

In pursuance of the recommendation of the Secretary of the Interior, Congress, on December 21, 1904, enacted the statute quoted in the margin.¹ (33 Stat. 595, c. 22.)

After the passage of the act the Government demanded a reconveyance of the lands, which was refused. This suit was then brought.

The controversy in the case, therefore, turns upon which of the surveys, Schwartz' or Barnard's, correctly marks the boundaries of the reservation. The difference in the surveys amounts to 293,837 acres. The Circuit Court accepted the Barnard survey and entered a decree cancelling the patents. The decree was affirmed by the Circuit Court of Appeals. 191 Fed. Rep. 947.

¹Sec. 1. That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands embraced in the Yakima Indian Reservation proper, in the State of Washington, set aside and established by treaty with the Yakima Nation of Indians, dated June eight, eighteen hundred and fifty-five: *Provided*, That the claim of said Indians to the tract of land adjoining their present reservation on the west, excluded by erroneous boundary survey and containing approximately two hundred and ninety-three thousand eight hundred and thirty-seven acres, according to the findings, after examination, of Mr. E. C. Barnard, topographer of the Geological Survey, approved by the Secretary of the Interior April seventh, nineteen hundred, is hereby recognized, and the said tract shall be regarded as a part of the Yakima Indian Reservation for the purposes of this Act: *Provided further*, That where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by *bona fide* settlers or purchasers under the public land laws, such rights shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit and in the construction of irrigation works on the Yakima Indian Reservation.

The special controversy in the case is the location of the western boundary of the reservation. But as partly determinative of that the western point of the northern boundary must be considered. The northern boundary of the reservation commences at the junction of the Yakima and Attahnam rivers and proceeds to the forks of the latter and along its southern tributary to the "Cascade Mountains." What constitutes the Cascade Mountains is the first serious dispute in the case. The appellants contend that the mountains are given location by the termination of the southern tributary of the Attahnam River. In other words, the headwaters of that tributary mark the Cascade Mountains. But the next call is to be considered. By that call the line is to run "southerly along the main ridge of said mountains," and as said by the Circuit Court, the line must reach the main ridge to run southerly along it. The court erred, appellants contend, by assuming that the treaty makers meant to designate the *main ridge* of the mountains instead of a *ridge* of the mountains. We cannot, of course, reproduce all of the argument of counsel. It is, in effect, that the treaty makers meant what they said, that their knowledge was not imperfect, that they knew where the waters of the Attahnam River terminated and they turned south from there along "that ridge of those mountains" in which they found themselves. Assuming this, it is said, "every difficulty in following the calls of the treaty at once disappears." But the difficulties do not disappear; they multiply, and mountains and rivers appear to conflict in their testimony. The next call must be changed to be accommodated to counsels' view. That call, in full, is this: "Thence southerly along the main ridge of said mountains [Cascade Mountains], passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco Rivers." Counsel would strike out the comma after the word "mountains" and the

comma after the word "Adams," asserting then the main ridge to be that which passes (passing) south and east of Mount Adams to the spur whence flows the waters of the Klickitat and Pisco rivers. In other words, the call primarily locates and defines the ridge and not the boundary line. And so change the call, it is further said, and there is intelligible continuity between it and the next call, which reads, "thence down said spur (whence flow the waters of the Klickitat and Pisco rivers) to the divide between the waters of said rivers." Punctuation, it may be admitted, is a fallible standard of the meaning of a statute (*Ewing v. Burnet*, 11 Pet. 41, 54; *Hammock v. Loan & Trust Co.*, 105 U. S. 77, 84, 85). It is, however, not without force, and in the present case the location of the commas is consistent with the purpose of simply marking the course of the boundary line. But even without changing the punctuation, counsel contend "that the words 'passing south and east of Mount Adams' qualify the word 'mountains' and indicate which ridge was intended, namely a main ridge (as distinguished from spurs or 'subdivides') which should pass south and east of Mount Adams." We cannot assume a plurality of main ridges and that the treaty meant to distinguish one from the others. The main ridge necessarily had a definite and conspicuous individuality and needed no identification. It is used in Article 1 of the treaty to mark the course of the boundary line of the tract ceded by the Indians to the United States. The Indians always claimed it as the western boundary of the reservation and the earliest maps confirmed the claim. Schwartz had no difficulty in determining it. He did not run his line to it because he considered other calls were more controlling. He was in no uncertainty as to its location. It was and is a natural and conspicuous landmark and was selected to define the immense area of land ceded by the Indians to the United States and the lesser though extensive tract

reserved by them for their own use. We must keep in mind their situation—what they gave and what they reserved. They were not deeding, as the Government forcibly says, acres or even townships. They gave up a principality. They reserved, it is true, a much lesser tract, but it was natural and inevitable that “the greater boundaries of nature” should be selected to define both. These the Indians could understand and estimate. “The inferior ridges or spurs, connected with but leading away from the main ridge,” could not be so definitely intelligible. The Indians had to be satisfied. They entered into negotiations with the representative of the Government reluctantly, their chief testified. They feared the encroachments of the white man. Their fears were allayed by adapting the treaty to their understanding, by delineating the land they conveyed and the land they reserved by great and commanding objects. They have never indicated by word or act that the main ridge was not single and distinct in their minds or that it was at any time confounded by them with lesser ridges. They never have wavered in the expression of their understanding and their insistence that it constituted the western boundary of the reservation and that it extended to the base of Mount Adams on the south. They always had, as we shall see, an intelligible conception of the western boundary and its definition by natural objects. It is only by regarding this understanding and the more prominent natural objects that the calls of the treaty can be accommodated to the topography of the country.

Some of the natural objects, considered by themselves, it may be admitted support the contention of appellants. The most important of these is that mentioned in the fifth call of the treaty. According to the fourth call the line runs southerly along the main ridge to the spur whence flow the waters of the Klickitat and Pisco rivers, and (5th) “thence down said spur to the divide between the waters

of said rivers." (*Italics ours.*) It was this call which determined Schwartz' survey. He knew that the main ridge of the Cascades is west of the tributary of the Attahnam River, but he put it out of consideration or effect. He regarded what he conceived to be the divide between the waters of the Klickitat and Pisco rivers as dominating all other calls, although he was directed to confer with the agent at the Yakima Agency, with other white persons and with Indians familiar with the country, and obtain all the information possible and that would tend to a proper location and establishment, according to the provisions of the treaty, of the section of the boundary line he was directed to survey. He did not run his line to the main ridge of the mountains, because, as he said, he "could not do it without crossing the Klickitat River, and the treaty did not call for that." This was his error. He gave too much strength to some of the calls of the treaty and against other calls without attempting to give them all effect from a consideration of the topography of the country and the testimony he was directed to take. In this attitude of mind he made his survey and seems to have rejected everything which would disturb it.

We realize that there is confusion in the calls, irreconcilability, it may be from some points of view; but our effort must be to ascertain and execute the intention of the treaty makers, and as an element in the effort we have declared that concession must be made to the understanding of the Indians in redress of the differences in the power and intelligence of the contracting parties. *United States v. Winans*, 198 U. S. 371. The present case invokes in special degree the principle.

As we have seen, there were certain conspicuous landmarks which would attract the attention and be intelligible to the understanding of the Indians. Lesser marks would be given no significance. We have already observed the importance in this regard of the main ridge of the

mountains, and it was given emphasis besides by such a conspicuous object as Mount Adams. Mr. Barnard testified that Goat Rocks are prominent points on the main ridge and that Indian Chief Spencer told him that the northern line extended westward from the head of the Attahnam River to a sharp point east of Goat Rocks, which point was plainly visible and a well-marked feature in the landscape, and that the boundary line extended to a conical hump on the southeast slope of Mount Adams, which is well defined and plainly visible. The map made by the direction of Governor Stevens in 1857, to show the Indian reservations in Washington Territory at that time, and also the White Swan map show that the northern boundary runs to the main ridge of the mountains.

The Stevens map, though vouched for by him to be accurate, has many inaccuracies, as now demonstrated by a better knowledge of the country, and adds to the confusion if we seek to extend its testimony beyond a confirmation of the Indians' claim that the main ridge of the mountains is the western line of the reservation. By it the south fork of the Attahnam River is made to reach the summit of the Cascade far west of Mount Adams, and the line is run thence for some distance south on the ridge; thence southeasterly to the divide between the Satass and Columbia rivers. The tract delineated is relatively narrow from north to south, due probably, as the Government says, to a misunderstanding of the true situation of the Satass-Columbia divide and a failure to bring the west line down the main ridge to the southeasterly slope of Mount Adams as required by the treaty. There is another inaccuracy. The map shows the Klickitat River as heading west of the spur upon which Mount Adams is represented as rising. The mistake, now known to be such, shows how imperfect knowledge of the country was and the importance of giving effect to the more commanding features of the landscape.

Schwartz turned from the 51st mile post sharply north, deeming, as we have seen, the divide between the waters of the Klickitat and Pisco rivers as controlling. But to the west of the 51st mile post there is a mountain called Grayback, which the Indians claim was on the boundary line of the reservation. Schwartz disregarded it, although he testified that there was a ridge running westerly from a point a little south of the 51st mile post terminating in the Grayback mountain. He did not follow that ridge, he says, because it formed the divide between the waters of the Klickitat and Columbia rivers and did not form the watershed of the waters flowing into the Satass River. And yet Barnard, considering the calls of the treaty and in adaptation of them to the topography of the country, followed that ridge as part of the southern boundary, and in 1861 it was surveyed as part of the southern boundary. The survey is called the Berry & Lodge survey and was made by the direction of the Superintendent of Indian Affairs for the Territory of Washington. He directed them to proceed from the Yakima River westerly along the divide between the Satass and Columbia rivers and along the divide between the Klickitat and Pisco rivers until they arrived at the source of either the latter or the former, where they should terminate the survey. He added: "Should you find before arriving at the source of either of these rivers that the 'divide' has assumed the character of a perfect natural boundary, you will terminate your survey at the point where this description of boundary is attained." The plat of the survey indicates that the south boundary was run to a point on or near the Klickitat River and marks that stream as originating on the south slope of Mount Adams and flowing thence southwesterly. It also shows a tributary of the Pisco River as headed near the east side of the mountain and a spur of hills projecting between them southeasterly to meet the ridge constituting the Satass-Columbia divide. The field notes of the survey

are attached to the Government's brief and have this note: "South boundary only was surveyed, in accordance with the instructions of the Superintendent. The other boundaries are defined naturally." Some of the marks and posts of this survey were found by Barnard.

One other piece of evidence needs only to be adduced. Two Indians, one of them Chief Spencer, told him that in 1860 they accompanied certain Government agents of Governor Stevens along the southern boundary of the reservation, proceeding along a well defined ridge to Grayback Peak, upon the summit of which a marked wooden post was found set in the ground. From there, the agents told them, after sighting through an instrument pointed at a conical hump on the southeast slope of Mount Adams, that the line went straight to that point. This account was subsequently repeated. Chief Spencer (it was to this chief that Governor Stevens addressed himself in regard to the Indians removing to the reservation) testified that Governor Stevens promised to stake out the reservation and that some Government men, while standing with him at the junction of an Indian trail on a road called the Goldendale Road and which is marked on the Barnard map as being between Mount Adams and Grayback, told him that the line ran from one to the other and that Goat Rocks would be the northwest corner. He further testified that at the forks of the road and the trail there was a blazed tree on one side and a pile of rocks on the other. The statement received corroboration from Barnard, who testified that he discovered a blaze forty years old upon one of two large pine trees at the place indicated, both of which had been anciently blazed.

There is evidence which may be adduced in corroboration of the testimony of the respective witnesses, but we have referred to enough to indicate the character and relative strength of that which makes for or against the contentions of the parties, and, considerably weighing

it, we think it establishes the correctness of the Barnard survey. And we have arrived at and announce this conclusion with full sense of the weight which should be given to the action of the Land Department in approving the Schwartz survey and the issue of the patents. The action of the Land Department is necessarily a strong consideration. But it is opposed by later action and also by congressional action. At any rate, the action of the department has been brought in controversy, and because it may be supported by plausible or even strong arguments, it does not follow that the opposing claim becomes immediately so doubtful as to determine judgment against it. On the contrary, the question must be examined and decided with due regard to the entire situation, keeping in mind the action of the department as an element to be considered and applying the rule of the cases that it should not be disturbed except for reasons that are clear and convincing, assuming, without deciding, that the rule applies to a case in which the Government is proceeding in the right of the Indians.

The Court of Appeals expressed the view that the rule that resolves doubts in favor of the patent issued by the United States does not apply in such case, citing *Leavenworth Railroad Co. v. United States*, 92 U. S. 733; *Stewart v. United States*, 206 U. S. 185; *Minnesota v. Hitchcock*, 185 U. S. 373. Much can be said in support of that view. It must be borne in mind that the Indians had the primary right. The rights the Government has are derived through the cession from the Indians. If the Government may control the cession and control the survey and by the action of its agents foreclose inquiry or determine it, an easy means of rapacity is afforded, much quieter but as effectual as fraud. We should hesitate to put the Government in that attitude. It rejects that attitude and accepts a greater responsibility. It yields to the rule which this court has declared—that it “will

construe a treaty with the Indians as 'that unlettered people' understood it, and 'as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection,' and counterpoise the inequality 'by the superior justice which looks only to the substance of the right without regard to technical rules,' 119 U. S. 1; 175 U. S. 1." *United States v. Winans, supra.*

It is contended that the Northern Pacific Railway Company and the individual appellants are *bona fide* purchasers and, as such, entitled to protection under the act of March 2, 1896 (29 Stat. 42, c. 39). Section 1 of that act provides that suits brought by the United States to vacate and annul any patent to lands theretofore erroneously issued under a railroad or wagon road grant should only be brought within five years from the passage of the act, and suits brought to annul patents issued after the passage of the act should be brought within six years. And it is provided "That no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed." The act was one of a series of acts and manifestly applies only to the public lands of the United States subject to acquisition under the laws enacted for the disposition of the public domain.

We have seen that the act of December 21, 1904, protects rights acquired prior to March 5, 1904, to lands within the Barnard survey "by *bona fide* settlers or purchasers under the public land laws."

The appellants are not within that class, nor for the reasons we have stated can they avail themselves of the defense of the statute of limitations under § 8 of the acts of March 3, 1891. 26 Stat. 1093, 1099, cc. 559, 561.

Decree affirmed.